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Recent Developments - The Uniform Arbitration Act

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RECENT DEVELOPMENTS THE UNIFORM ARBITRATION ACT¹

I.	VALIDITY OF ARBITRATION AGREEMENTS	178
A.	<i>Piecemeal Resolution</i>	179
B.	<i>Application of Contract Principles</i>	180
II.	WAIVER	182
A.	<i>Right to Compel Arbitration</i>	182
B.	<i>Right to Raise Claims</i>	186
C.	<i>Right to Object to Arbitrability</i>	186
D.	<i>Right to Assert Grounds for Vacation</i>	187
III.	ARBITRABILITY	188
A.	<i>Existence of Agreement</i>	188
B.	<i>Scope of Agreement</i>	191
C.	<i>Effect of Res Judicata and Collateral Estoppel</i>	195
IV.	COMPELLING AND STAYING PROCEEDINGS	195
A.	<i>Compelling Arbitration</i>	195
B.	<i>Staying Judicial Proceedings</i>	197
C.	<i>Staying Arbitration</i>	198
V.	ARBITRATION PROCEEDINGS	199
VI.	CONFIRMATION AND VACATION OF AWARDS	201
A.	<i>Misconduct and Partiality</i>	202
B.	<i>Arbitrators Exceeded Their Powers</i>	204
C.	<i>Refusal to Hear Material Evidence</i>	206
D.	<i>No Arbitration Agreement</i>	206
E.	<i>Errors of Fact or Law</i>	208
F.	<i>Award Would Not Have Been Granted by a Court</i>	209
VII.	MODIFICATION OF AWARDS	209
A.	<i>Miscalculation of Figures</i>	210
B.	<i>Award Upon a Matter Not Submitted</i>	210
C.	<i>Award in Conflict with a Statute</i>	211
D.	<i>Procedural Issues</i>	212
VIII.	TIME LIMITATIONS ON MOTIONS TO VACATE OR MODIFY	212
IX.	JUDGMENTS ON AWARDS	219
A.	<i>Judgment on Award Entered by Court</i>	219

1. This project was written and prepared by the Missouri Law Review Candidates and the Missouri Journal of Dispute Resolution Candidates under the direction of the Missouri Law Review Associate Editor in Chief Gayle A. Grissum.

B. <i>Prejudgment Interest</i>	221
X. APPEALS	221
A. <i>Orders Compelling Arbitration</i>	222
B. <i>Orders Staying Judicial Proceedings</i>	222
C. <i>Orders Denying the Compulsion of Arbitration</i>	223
XI. JUDICIAL PROCEEDINGS	224
XII. JUDICIAL REVIEW	229
XIII. PREEMPTION	233

The Uniform Arbitration Act [hereinafter UAA] was proposed by the National Conference of Commissioners on Uniform State Laws in 1955.² At present, well over half of the states have enacted arbitration statutes based upon the UAA.³ The purpose of this survey is to explain the principles underlying recent court decisions interpreting the UAA, and provide a framework for analyzing future cases.⁴

I. VALIDITY OF ARBITRATION AGREEMENTS

The UAA provides that a written agreement to submit to arbitration "is valid, enforceable, and irrevocable, save upon such grounds as exist at law or in equity for the revocation of a contract."⁵ Recent cases interpreting the UAA indicate that the determination of the validity of an arbitration agreement will be affected by the court's desire to avoid piecemeal resolution of conflicts and the application of contract principles to the agreement.

2. Uniform Arbitration Act §§ 1 - 25, 7 U.L.A. 4 (1978) [hereinafter cited as UAA].

3. Jurisdictions which have enacted arbitration statutes based upon the UAA are Alaska, Arizona, Arkansas, Colorado, Delaware, District of Columbia, Florida, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Montana, Nevada, New Mexico, North Carolina, Oklahoma, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, and Wyoming.

4. See *Recent Developments: The Uniform Arbitration Act*, 1986 Mo. J. DISP. RES. 169 [hereinafter *Recent Developments* 1986]; *Recent Developments: The Uniform Arbitration Act*, 1985 Mo. J. DISP. RES. 173 [hereinafter *Recent Developments* 1985]; *Recent Developments: The Uniform Arbitration Act*, 1984 Mo. J. DISP. RES. 207 [hereinafter *Recent Developments* 1984]; *Recent Developments: The Uniform Arbitration Act*, 48 Mo. L. REV. 137 (1983) [hereinafter *Recent Developments* 1983]. The 1986 survey collected cases interpreting and applying the UAA decided between September, 1984 and September, 1985. The 1985 survey collected cases decided between September, 1983 and September, 1984. The 1984 survey collected cases decided between September, 1982 and September, 1983. The 1983 survey collected cases decided before September, 1982. This article surveys cases decided between September, 1985 and September, 1986.

5. UAA § 1.

A. Piecemeal Resolution

Although courts generally favor the resolution of disputes through arbitration, some courts have tempered their enthusiasm with an expressed concern for avoiding piecemeal resolution of conflicts. Judicial economy may require prohibiting arbitration of claims when some of the claims are non-arbitrable and arbitration of the remainder would result in duplication of presentations and evidence before the arbitration panel and the circuit court.⁶ In *Joba Construction v. Monroe County Drain Commission*,⁷ Joba had a contract with Monroe County to construct a water pollution control facility. The contract contained an arbitration agreement. When the Monroe County Drain Commission became dissatisfied with Joba's work, it issued a stop order. Joba filed for arbitration pursuant to the contract, and, in addition, sued the commissioner in circuit court requesting the same relief as requested in the arbitration claim. The commissioner and the county filed a counterclaim against Joba, alleging abuse of process. The county also sued the surety on a performance bond, and the surety filed a third party complaint against Joba seeking indemnification. The action on the performance bond was consolidated with Joba's suit and Monroe County was added as a defendant in Joba's action. The court stated that the abuse of process claim and the action on the performance bond were not subject to arbitration.⁸ The court reasoned that the repetition of evidence and presentations to the arbitrator and in the court would be inconsistent with the arbitration objective of providing an inexpensive and expeditious disposition of disputes.⁹ Therefore, the court held that the principle of judicial economy prohibited arbitration.¹⁰

In contrast, the court in *Steinberg v. Prudential-Bache Securities*,¹¹ held that a dispute was arbitrable despite the fact that arbitration may be detrimental to a class action proceeding.¹² In *Steinberg*, a client initiated a class action suit against Prudential-Bache for improper use of customers' funds. The defendant moved to compel arbitration in accordance with the client's agreement. The court compelled arbitration, holding that strong policy considerations required an arbitration agreement to be upheld despite probable detriment to class action proceedings.¹³ Employing a balancing test, the court concluded that the policies favoring arbitration outweighed those underlying the maintenance of a class action.¹⁴

6. *Joba Construction Co. v. Monroe County Drain Commissioner*, 150 Mich. App. 173, 388 N.W.2d 251 (1986).

7. *Id.*

8. *Id.*

9. *Id.*

10. *Id.*

11. Slip Op. No. 8173 (Del. 1985).

12. *Id.*

13. *Id.*

14. *Id.*

B. Application of Contract Principles

The UAA provides that an arbitration agreement is valid unless grounds exist at law or in equity for the revocation of a contract.¹⁵ As a result, courts apply contract principles to determine the validity of an arbitration agreement.

1. The Writing Requirement

The UAA requires that an arbitration agreement be in writing.¹⁶ The arbitration agreement may be either a clause within a written contract, or a separate written agreement. Rules of a commodity exchange which contain an arbitration provision may constitute a sufficient writing under the UAA.¹⁷ In *Wigod v. Chicago Mercantile Exchange*,¹⁸ plaintiff signed a contract with Chicago Mercantile Exchange (CME) saying that plaintiff, as a member of CME, agreed to abide by its rules, orders, and bylaws. The rules included an arbitration clause which stated that litigation between disputing members was against CME policy. The court viewed the rules as analogous to corporate bylaws and stated that bylaws may constitute a sufficient writing to satisfy the Illinois Arbitration Act.¹⁹ The court, however, interpreted the arbitration clause in the rules to be non-compulsory,²⁰ as the rules simply stated a policy. Therefore, plaintiff was not compelled to submit disputes to arbitration.²¹ The court's conclusion was reinforced by an additional clause in the rules which required opposing parties to sign an arbitration agreement before any arbitration proceeding commenced. The court reasoned that if arbitration were compulsory by virtue of the arbitration clause, the execution of an arbitration agreement would be superfluous.²²

Although courts almost always require that an arbitration agreement be in writing, at least one court has found an enforceable arbitration agreement without the existence of a writing.²³ In *Hot Springs County School District v. Strube Construction Co.*,²⁴ the School District argued that because there was no arbitration agreement in its contract with a construction company,

15. UAA § 1.

16. *Id.*

17. *Wigod v. Chicago Mercantile Exchange*, 141 Ill. App. 3d 129, 490 N.E.2d 39 (1986).

18. *Id.*

19. *Id.* at 131, 490 N.E.2d at 41.

20. *Id.*

21. *Id.*

22. *Id.*

23. *Hot Springs County School District v. Strube Construction Co.*, 715 P.2d 540 (Wyo. 1986).

24. *Id.*

the arbitrators had exceeded their powers by proceeding with the arbitration. In rejecting this contention, the court stated, "an agreement to arbitrate need not be written and can arise as the result of the conduct of the parties to an existing dispute regardless of whether or not they have previously contracted for arbitration."²⁵ The court held that by participating in the arbitration, the School District waived its right to raise the issue of whether or not the dispute was subject to arbitration.²⁶

2. Fraudulent Inducement

Fraudulent inducement is a ground for revocation of an arbitration agreement.²⁷ In *Grane v. Grane*,²⁸ a dispute arose over the division of a family-owned business. Plaintiff filed suit seeking declaratory relief despite the existence of an arbitration agreement. Plaintiff alleged that the agreement's designated arbitrator had fraudulently induced him into signing the agreement. The trial court, however, dismissed the arbitrator from plaintiff's law suit on the grounds that the arbitrator was immune from liability.²⁹ The appellate court ruled that plaintiff was entitled to a hearing to determine whether the arbitration agreement had been the result of fraudulent inducement, and therefore, could be voided.³⁰ The court held that in the absence of a valid arbitration agreement, the arbitrator is not shielded by immunity.³¹

3. Repudiation

A party's repudiation of a contract containing an arbitration agreement does not constitute a waiver of that party's right to compel arbitration under the contract, absent a specific repudiation of the arbitration agreement.³² In *U.S. Insulation Inc. v. Hilro Construction*,³³ Hilro, a general contractor, repudiated its contract with U.S. Insulation (USI), a subcontractor, because USI had failed to include certain materials in its bid price. Although the contract contained an arbitration clause, USI filed suit for damages. Hilro then moved to compel arbitration. The court held that by repudiating the

25. *Id.* at 545 (citing 5 AM. JUR. 2D, *Arbitration and Award* § 12, (1962); and 6 C.J.S., *Arbitration* § 8, 17 (1975)).

26. *Hot Springs*, 715 P.2d at 546.

27. *Grane v. Grane*, 143 Ill. App. 3d 979, 493 N.E.2d 1112 (1986).

28. *Id.*

29. *Id.* at 981, 493 N.E.2d at 1114 (quoting *Tameri v. Conrad*, 552 F.2d 778, 780 (7th Cir. 1977) "an arbitrator is immune from suit for all acts which he performs in his capacity as an arbitrator").

30. *Id.* at 983, 493 N.E.2d at 1116.

31. *Id.*

32. *U. S. Insulation Inc. v. Hilro Construction*, 146 Ariz. 250, 705 P.2d 490 (1985).

33. *Id.*

contract, Hilro had not waived its right to compel arbitration.³⁴ The court reasoned that the concept of separability was embodied in the law of arbitration.³⁵ Therefore, the arbitration clause was "an agreement separate from the principal contract,"³⁶ and was enforceable absent evidence that the arbitration clause itself had been repudiated.³⁷

II. WAIVER

Arbitration is a contract right which may waived.³⁸ The issue of waiver must be determined as a preliminary matter as a finding of waiver will substantially alter what otherwise would have been a party's right to arbitration. A waiver of the right to arbitrate will prevent a party from compelling arbitration under the contract.³⁹ Similarly, a party may become bound by an adverse arbitration award by waiver of the right to raise an objection, claim, or defense.⁴⁰

A. Right to Compel Arbitration

Courts will find a waiver of the right to compel arbitration when a party engages in conduct deemed to be inconsistent with a right to arbitrate.⁴¹ Such conduct may include repudiation of the arbitration agreement,⁴² submission of arbitrable issues to litigation,⁴³ and failure to make a timely assertion of rights.⁴⁴ A number of courts require that conduct inconsistent with a right to arbitrate prejudice the adverse party before it can constitute a waiver.⁴⁵

1. Repudiation of the Arbitration Agreement

A party that repudiates an arbitration agreement waives the right to later compel arbitration.⁴⁶ The right is not waived, however, by a party that re-

-
34. *Id.*
35. *Id.* at ____, 705 P.2d at 493.
36. *Id.* (citing M. DOMKE, LAW AND PRACTICE OF COMMERCIAL ARBITRATION (1968)).
37. *U. S. Insulation*, 146 Ariz. at ____, 705 P.2d at 493.
38. *Servomation Corp. v. Hickory Construction Co.*, 342 S.E.2d 853 (N.C. 1986).
39. See *infra* notes 41-72 and accompanying text.
40. See *infra* notes 80-84 and accompanying text.
41. *Kostakos v. KSN Joint Venture No.1*, 142 Ill. App. 3d 533, 491 N.E.2d 1322 (1986).
42. *U.S. Insulation v. Hilro Construction*, 146 Ariz. 250, 705 P.2d 490 (1985).
43. *Joba Construction Co. v. Monroe County Drain Comm'r*, 150 Mich. App. 173, 388 N.W.2d 251 (1986).
44. *Moorcroft v. First Insurance Co. of Hawaii*, 720 P.2d 178 (Hawaii 1986).
45. *Servomation Corp. v. Hickory Construction Co.*, 342 S.E.2d 853, 854 (N.C. 1986).
46. *U.S. Insulation*, 146 Ariz. 250, 705 P.2d 490.

pudiates other obligations under the contract.⁴⁷ In *U.S. Insulation Inc. v. Hilro Construction Co.*,⁴⁸ USI and Hilro entered into a contract which contained an arbitration clause. In response to alleged breaches of the contract by USI, Hilro gave written notice that it was considering the contract to be "no longer in effect."⁴⁹ USI filed a damage suit and Hilro moved to stay proceedings and compel arbitration pursuant to the contract. USI objected on the ground that Hilro had waived the right to compel arbitration when it repudiated the contract. The court held that while a repudiation of the arbitration clause itself, or a claim that the contract was void *ab initio*, would waive the right to arbitrate, repudiation of any other obligation under the contract would not.⁵⁰ Therefore, Hilro's repudiation did not constitute a waiver of the right to compel arbitration.⁵¹

2. Participation in Litigation

Waiver may be implied when a party actively participates in litigation.⁵² In *Joba Construction Co. v. Monroe County Drain Commissioner*,⁵³ Joba filed a demand for arbitration after the County Drain Commission issued a stop work order on construction of water pollution control facilities. After requesting arbitration, Joba then filed a complaint in the Monroe County circuit court asking for relief similar to that sought in arbitration. When the County and the drain commissioner counterclaimed, Joba denied the counterclaim, but failed to raise arbitration as a defense. Joba engaged in discovery by both answering interrogatories and submitting interrogatories of its own. The court found that Joba evinced considerable behavior inconsistent with the right to arbitrate, and had therefore waived the right.⁵⁴ Waiver was founded in Joba's submission of arbitrable issues to litigation, failure to raise arbitration as a defense in replying to the counterclaim, and participation in discovery.⁵⁵

In contrast, the court in *Kostakos v. KSN Joint Venture No. 1*,⁵⁶ refused

47. *Id.*

48. *Id.*

49. *Id.* at ____, 705 P.2d at 498.

50. *Id.*

51. *Id.*

52. *Joba Construction Co. v. Monroe County Drain Comm'r*, 150 Mich. App. 173, 388 N.W.2d 251 (1986).

53. *Id.*

54. *Id.* at 179-80, 388 N.W.2d at 254.

55. The *Joba* decision was also based in part upon judicial economy. Since some of the claims between the parties were not arbitrable, and those claims required presentation of the same evidence, the court felt that economy would be better served by settling the claims all in one judicial proceeding rather than bifurcating them into judicial and arbitration proceedings.

56. 142 Ill. App. 3d 533, 491 N.E.2d 1322 (1986).

to find a waiver when a defendant engaged in various procedural motions and participated in discovery before finally seeking to compel arbitration. In *Kostakos*, plaintiff filed a complaint seeking to dissolve a joint venture created by a contract which contained an arbitration clause. During the following months, defendant participated in plaintiff's depositions and filed a number of motions with the court. Ultimately, defendant filed an answer invoking the arbitration clause in the joint venture contract as an affirmative defense. After plaintiff filed an amended complaint, the defendant filed a motion to compel arbitration. The court held that defendant had not waived its right to arbitrate by participating in the litigation, as waiver is to be determined by the types of issues submitted, not the number of papers filed with the court.⁵⁷ Defendant had not submitted substantive issues to the court for determination, asserted counterclaims, filed interrogatories or taken dispositions. Under these facts, the court held that defendant's participation in the litigation had not constituted waiver of its right to seek arbitration.⁵⁸

The court in *Servomation v. Hickory Construction*⁵⁹ held that the mere filing of a complaint does not result in a waiver, absent evidence showing prejudice to the adverse party. In *Servomation*, plaintiff filed suit seeking recovery for the negligent construction of a roof. Defendant asserted as a defense the plaintiff's failure to submit the dispute to arbitration as required by their contract. Defendant also filed a third-party complaint and served interrogatories on plaintiff. The court held that the third-party complaint and the interrogatories would not constitute a waiver of the right to arbitrate without some evidence that plaintiff had been prejudiced by those actions.⁶⁰ Evidence of prejudice could include being forced to bear the expense of a long trial, losing helpful evidence, taking steps in litigation to plaintiff's detriment, expending significant amounts of money on the litigation, or making available to the opponent the use of judicial discovery procedures not available in arbitration.⁶¹ The court, however, specifically rejected the contention that the expense of answering interrogatories would be sufficient to show prejudice.⁶²

Similarly, in *Sentry Engineering and Construction Inc. v. Mariner's Cay Development Corp.*,⁶³ the court held that a showing of prejudice is required when waiver through participation in litigation is asserted. *Sentry* involved a contract for the construction of condominiums. As the project neared completion, Sentry filed a mechanics lien and an arbitration claim. Sentry then petitioned the circuit court for an injunction permitting access to the

57. *Id.* at ____, 491 N.E.2d at 1325.

58. *Id.*

59. 342 S.E.2d 853 (N.C. 1986).

60. *Id.* at 854.

61. *Id.*

62. *Id.* at 855.

63. 287 S.C. 346, 338 S.E.2d 631 (1985).

site so as to correct deficiencies in the roof. On appeal, Mariner's Cay Development argued that seeking the injunction in the circuit court was inconsistent with Sentry's right to arbitrate and was, therefore, a waiver of that right. Sentry answered that seeking the injunction was not inconsistent with arbitration, as Sentry did not seek to litigate any arbitrable issues. Holding that prejudice rather than inconsistency is determinative, the court refused to find waiver when Mariner's Cay had made no showing that it had been prejudiced by having to litigate the injunction.⁶⁴

3. Failure to Make a Timely Assertion

In *U.S. Insulation v. Hilro Construction Co.*,⁶⁵ the court held that a party that had no obligation to seek arbitration could not be held to have waived the right to compel arbitration through delay. In *U.S. Insulation*, USI argued that Hilro had waived its right to compel arbitration through delay. The argument was rejected by the court because the particular agreement between the parties placed the obligation to seek arbitration on USI.⁶⁶ Hilro's delay could not operate as a waiver when Hilro was under no obligation to seek arbitration.⁶⁷

The court in *Kostakos v. KSN Joint Venture No. 1*⁶⁸ held that when both plaintiff and defendant had been dilatory, defendant's delay did not constitute a waiver of the right to compel arbitration. Fifteen months after plaintiff initiated its lawsuit, defendant filed an answer raising the arbitration agreement as a defense. An additional eight months passed before defendant filed a motion to compel arbitration. The court refused to hold that defendant's delay prejudiced plaintiff and resulted in waiver of defendant's right to compel arbitration as plaintiff had also been guilty of procrastination in the pursuit of his lawsuit.⁶⁹

An insurance company may waive its right to compel arbitration by allowing its insured driver to proceed with a lawsuit against the other driver.⁷⁰ *Moorcroft v. First Insurance Co. of Hawaii*,⁷¹ involved a dispute between an insured and her insurance company after the company neither accepted

64. *Id.* at ____, 338 S.E.2d at 634.

65. 146 Ariz. 250, 705 P.2d 490 (1985).

66. The arbitration clause provided that when controversies arose, USI would be deemed to agree with Hilro's decision unless USI sought arbitration within 30 days. *Id.* at 258, 705 P.2d at 498.

67. *Id.*

68. 142 Ill. App. 3d 533, 491 N.E.2d 1322 (1986).

69. *Id.* at 536, 491 N.E.2d at 1325.

70. *Moorcroft v. First Ins. Co. of Hawaii*, 720 P.2d 178 (Hawaii 1986).

71. *Id.* Hawaii had not adopted the UAA, but the court relied on precedent from UAA jurisdictions in reaching its decision.

nor denied the insured's claim for uninsured motorist benefits. Keeping the insurance company apprised of the proceedings, the insured sued the uninsured driver and obtained a judgment. When she requested that the insurance company pay her the full amount of the judgment, the company demanded arbitration. The court held that by allowing her to proceed with her lawsuit, the insurance company had waived its right to submit the issues of liability and damages to arbitration.⁷²

B. Right to Raise Claims

Claims may be deemed to be waived when a party fails to properly assert them.⁷³ In *Hedlund v. Citizen's Security Mutual Insurance Company of Red Wing*,⁷⁴ a widower sought costs and prejudgment interest when he applied for confirmation of an arbitration award. The court held that the costs and prejudgment interest could not be awarded by the court because they had not been awarded by the arbitrators and were requested only upon application for confirmation of the award.⁷⁵ Failure to move for modification or correction of the award resulted in waiver of the claim for costs and prejudgment interest.⁷⁶

Similarly, in *Wanschura v. Western National Mutual Insurance Company*,⁷⁷ the court denied prejudgment interest to a plaintiff who failed to ask that it be included in the arbitration award. The father of a child killed in an automobile accident received an award from an arbitration panel and upon motion to confirm the award, asked for prejudgment interest. The court ruled that he had waived his claim for the interest by failing to ask that it be included in the arbitration award.⁷⁸ Therefore, it could not be awarded by the court upon a motion to confirm.⁷⁹

C. Right to Object to Arbitrability

In *Hot Springs County School District v. Strube Construction Co.*,⁸⁰ the court found that participation in arbitration proceedings without a proper objection to arbitrability constitutes a waiver of any rights to later object.

72. *Id.* at 180.

73. *Hedlund v. Citizen's Security Mutual Ins. Co. of Red Wing*, 377 N.W.2d 460 (Minn. Ct. App. 1985).

74. *Id.*

75. *Id.* at 464.

76. *Id.*

77. 389 N.W.2d 927 (Minn. Ct. App. 1986).

78. *Id.* at 928.

79. *Id.*

80. 715 P.2d 540 (Wyo. 1986).

Strube was involved in construction of a football field for the School District when a dispute over the project arose. The contract between the parties did not contain an arbitration clause, but Strube requested arbitration. In its answer to the arbitration request, the School District claimed that the Wyoming Public Works Standards and Specifications were incorporated into the contract, and that since those specifications required that any request for arbitration be made within thirty days of the occurrence of the dispute, Strube's request for arbitration was untimely. At the outset of the arbitration hearing, the School District moved to dismiss on the same grounds. The motion was denied by the arbitration panel and the arbitration proceeded. The arbitrators found in favor of Strube. The award was confirmed and the School District appealed.⁸¹ The appellate court first found that the Wyoming Public Works Standards and Specifications were not a part of the contract, and therefore, the School District's objection to timeliness failed.⁸² Despite the dissent's opinion that the objection to timeliness evinced an intent to oppose arbitration of the dispute and should have been enough to preserve the school district's right to object to arbitrability,⁸³ the majority held that by participating in the arbitration proceeding without objecting to arbitrability, the School District waived its right to oppose arbitration.⁸⁴

D. *Right to Assert Grounds for Vacation*

A party that fails to comply with the time requirements of the arbitration statute will be deemed to have waived the right to assert grounds for vacation of an arbitration award.⁸⁵ In *Walter A. Brown, Inc. v. Moylan*,⁸⁶ an apartment owner received an arbitration award against the managing agent of one of her apartments and filed for confirmation of the award. The agent's answer raised a number of defenses and sought vacation of the award. The answer, however, was filed 107 days after the delivery of the award instead of within the maximum 90 days.⁸⁷ The court held that by failing to assert his defenses within the 90 day limit, the agent was deemed to have waived them.⁸⁸

Similarly, the plaintiff in *Littlejohn v. Keystone Insurance Co.*⁸⁹ became involved in a dispute with her insurance company over her uninsured motorist

81. *Id.* at 541.

82. *Id.* at 545.

83. *Id.* at 551.

84. *Id.* at 546.

85. *Walter A. Brown, Inc. v. Moylan*, 509 A.2d 98 (D.C. 1986).

86. *Id.*

87. D.C. CODE ANN. §§ 16-4310, 16-4311(b) require that reasons to vacate be presented within 90 days of delivery of the award.

88. *Brown*, 509 A.2d at 100.

89. 353 Pa. Super. 63, 509 A.2d 334 (1986).

benefits, and the matter was submitted to arbitration. The arbitrators found for the insurance company and Littlejohn's motion to vacate was denied. On appeal, she asserted a new ground for vacation. The court dismissed the new objection as waived by the failure to raise it in the lower court.⁹⁰

III. ARBITRABILITY

Parties are essentially free to define in their written arbitration agreements what issues will be subject to arbitration.⁹¹ If parties later disagree on whether a specific dispute is covered by the arbitration agreement, a court must determine the arbitrability of the dispute.⁹² In determining arbitrability, courts will examine the existence and scope of the arbitration agreement.⁹³

A. Existence of Agreement

In *Elbadramany v. Stanley*,⁹⁴ the court held that a provision in the bylaws of a voluntary association which required that disputes between members be submitted to arbitration constituted a binding agreement between the members.⁹⁵ In *Elbadramany*, the plaintiff and defendant were real estate brokers and members of the Board of Realtors (Board). The Board membership application included a provision mandating compliance with all Board by-laws, rules, and regulations. One bylaw required settlement of all disputes between members through an arbitration process.⁹⁶ When a disagreement arose over a commission, the parties arbitrated the issue. Plaintiff, however, objected to the proceedings, asserting that no agreement existed between him and defendant which required them to arbitrate their dispute.⁹⁷ The appellate court held that the association bylaws constituted a valid arbitration agreement between members and, therefore, plaintiff and defendant were required to arbitrate their dispute.⁹⁸

90. *Id.* at ____, 509 A.2d at 336.

91. *Fort Wayne Community Schools v. Fort Wayne Educ. Ass'n*, 490 N.E.2d 337 (Ind. Ct. App. 1986).

92. The UAA restricts when arbitrability may be addressed by the courts. Courts may decide the issue of arbitrability when a party moves to compel or stay arbitration. UAA § 2. Further, courts may rule on arbitrability when a motion to vacate an award is made on the grounds that a valid arbitration agreement does not exist. UAA § 12(a)(5).

93. *See e.g.*, *Fryer v. National Union Fire Ins. Co.*, 365 N.W.2d 249, 253 (Minn. 1985).

94. 490 So. 2d 964 (Fla. Dist. Ct. App. 1986).

95. *Id.* at 966.

96. *Id.* at 964-65.

97. *Id.*

98. *Id.* at 966.

In *Wigod v. Chicago Mercantile Exchange*,⁹⁹ the court held that a commodity exchange rule which stated that litigation was contrary to exchange policy and provided for arbitration of disputes did not constitute a compulsory arbitration agreement.¹⁰⁰ A member of the Chicago Mercantile Exchange (CME) filed an arbitration claim against the plaintiff, who refused to submit to the jurisdiction of the arbitration panel and filed suit to vacate the arbitration award against him. The lower court confirmed the award.¹⁰¹ In reversing, the appellate court reasoned that CME rules did not constitute a compulsory agreement between members to arbitrate. The rules did not expressly prohibit litigation between members but instead stated that it was contrary to CME policy.¹⁰² Since the language of the agreement was noncompulsory, the plaintiff could not be compelled to submit to arbitration.¹⁰³

Where two contracts are treated as integrated, an arbitration clause in one contract may be held to apply to disputes arising under either contract.¹⁰⁴ In *Sentry Engineering and Construction, Inc. v. Mariner's Cay Development Corporation*,¹⁰⁵ owner and contractor concurrently executed documents covering construction costs (cost document) and profits and costs over construction costs (profit document). The cost document contained an arbitration provision and incorporated the profit document through an agreement modification provision.¹⁰⁶ The profit document incorporated the cost document by reference.¹⁰⁷ The court found the two documents had been executed for the single purpose of providing compensation for construction and, therefore, comprised a single contract.¹⁰⁸ The court then applied the contract principle which provides that in the absence of a contrary intention, where multiple instruments are concurrently executed by the same parties, for the same purpose, and in the course of the same transaction, the instruments will be treated as a single contract.¹⁰⁹ The court held that the arbitration provision in the cost document applied to the contract as a whole and not merely to the portion of the contract evidenced by the cost document.¹¹⁰

Similarly, in *Evansville-Vanderburgh School Corp. v. Evansville Teachers Association*,¹¹¹ a teacher contended that an arbitration clause contained in a collective bargaining agreement should be applied to disputes arising under

99. 141 Ill. App. 3d 129, 490 N.E.2d 39 (1986).

100. *Id.* at 132, 490 N.E.2d at 41.

101. *Id.*

102. *Id.*

103. *Id.*

104. *Sentry Engineering & Construction Inc. v. Mariner's Cay Dev. Corp.*, 287 S.C. 346, 338 S.E.2d 631 (1985).

105. *Id.*

106. *Id.* at ____, 338 S.E.2d at 632-33.

107. *Id.* at ____, 338 N.E.2d at 633.

108. *Id.*

109. *Id.*

110. *Id.* at ____, 338 S.E.2d at 633-34.

111. ____ Ind. App. ____, 494 N.E.2d 321 (1986).

a supplemental Side Letter Agreement. The school district argued that only disputes arising under the collective bargaining agreement should be subject to arbitration.¹¹² The language in the Side Letter Agreement, however, clearly stated that it was a supplement to the collective bargaining agreement.¹¹³ As a result, the court found that grievances arising under the Side Letter Agreement were subject to arbitration.¹¹⁴

In contrast, the court in *Board of Education of Indian Prairie Community School District No. 204, Dupage and Will Counties v. Indian Prairie Education Ass'n, IEA/NEA*,¹¹⁵ held that a memorandum attached to a collective bargaining agreement was not part of the agreement.¹¹⁶ The memorandum was contained in the same pamphlet as the collective bargaining agreement, but was separated by a divider page which stated, "these Memos are not part of the negotiated Agreement."¹¹⁷ The Association filed a grievance on behalf of a teacher who claimed he was wrongly assigned to a supervision period in contravention of the terms of the memorandum. The Board contended that the memorandum was not to take effect until the following semester. The Association then filed a demand for arbitration pursuant to the collective bargaining agreement. Acknowledging that the dispute would be arbitrable were the memorandum part of the collective bargaining agreement, the appellate court invoked the principle that a party can be compelled to submit to arbitration only if he has contracted to do so.¹¹⁸ Since the memorandum was not part of the collective bargaining agreement, and the parties contracted to submit to arbitration disputes arising under the collective bargaining agreement only, the dispute involving the contents of the memorandum was not arbitrable.¹¹⁹

In *Kelsey & Son, Inc. v. Architectural Openings, Inc.*¹²⁰ the court refused to extend an arbitration clause in a written contract to disputes arising under a subsequent oral contract. In *Kelsey*, a general contractor and a subcontractor entered into a written contract for the construction and installation of dormitory closet doors. The written contract contained an arbitration clause. Subsequently, the parties entered into an oral agreement for the production of metal wardrobes. Payment disputes arose regarding both projects and the subcontractor filed a motion to compel arbitration.¹²¹ The court held disputes arising under the oral agreement were not subject to arbitration.¹²²

112. *Id.* at ____, 494 N.E.2d at 325.

113. *Id.* at ____, 494 N.E.2d at 325-26.

114. *Id.* at ____, 494 N.E.2d at 326.

115. 139 Ill. App. 3d 1040, 487 N.E.2d 1149 (1985).

116. *Id.* at 1045, 487 N.E.2d at 1153.

117. *Id.* at 1042, 487 N.E.2d at 1151.

118. *Id.* at 1044, 487 N.E.2d at 1152.

119. *Id.* at 1045, 407 N.E.2d at 1153.

120. 484 So. 2d 610 (Fla. Dist. Ct. App. 1986).

121. *Id.* at 611.

122. *Id.*

The court refused to extend the arbitration clause of the written agreement to the oral contract in the absence of an express agreement to do so.¹²³

A claim for relief based on an implied contract theory is not subject to arbitration under the UAA, as there is no express arbitration agreement.¹²⁴ In *Shaffer v. Pennsylvania Liquor Control Board*,¹²⁵ an employee filed a petition with the Board of Claims, seeking reimbursement for travel expenses. The employee based his claim on a theory of implied contract.¹²⁶ This dispute was not arbitrable because no express agreement to arbitrate can exist under an implied contract theory.¹²⁷

Similarly, in *Johnson v. Travelers*,¹²⁸ the court refused to compel arbitration where plaintiff sought relief under an implied contract theory.¹²⁹ Plaintiff was injured when he was struck by an uninsured vehicle. Although plaintiff did not have uninsured motorist coverage, Pennsylvania law required insurers to provide uninsured motorist benefits to their insureds just as if their policies included such coverage.¹³⁰ Plaintiff used an implied contract theory to argue that because all Pennsylvania insurance contracts must provide for binding arbitration to resolve disputes regarding uninsured motorist benefits, plaintiff was entitled to arbitration despite the fact that there was no express arbitration agreement.¹³¹ The court refused to order arbitration in the absence of an express agreement between the parties.¹³²

B. Scope of Agreement

In *Fort Wayne Community Schools v. Fort Wayne Education Association, Inc.*,¹³³ the court declared that "[s]ince arbitration arises through contract, the parties are essentially free to define for themselves what questions may be arbitrated. . . ."¹³⁴ In *Fort Wayne*, the School District and the Association took part in an arbitration process required by their collective bargaining agreement. The arbitration was the result of a dispute which arose over the adjustment of class size in the School District.¹³⁵ After an arbitration

123. *Id.*

124. *Shaffer v. Pennsylvania Liquor Control Bd.*, 92 Pa. Commw. 374, 500 A.2d 917 (1985). See also UAA § 1.

125. *Id.*

126. *Id.* at ____, 500 A.2d at 919.

127. *Id.* at ____, 500 A.2d at 921.

128. 348 Pa. Super. 278, 502 A.2d 206 (1985).

129. *Id.* at ____, 502 A.2d at 209.

130. 31 PA. ADMIN. CODE § 63.2 (Shephards ____).

131. *Johnson*, 348 Pa. Super. at ____, 502 A.2d at 208.

132. *Id.* at ____, 502 A.2d at 209.

133. 490 N.E.2d 337 (Ind. Ct. App. 1986).

134. *Id.* at 341.

135. *Id.* at 338.

award in favor of the Association, the School District appealed.¹³⁶ The School District claimed that the arbitrator's award should be modified or vacated because the arbitrator did not specify which collective bargaining provision had been violated. The Indiana Court of Appeals rejected the School District's argument. The arbitrator's decision, said the court, clearly stated the specific provision applicable to the dispute.¹³⁷ The court went on to note that the parties were essentially free to define for themselves what questions could be arbitrated.¹³⁸ The dispute in question was, therefore, subject to arbitration.¹³⁹

In *U.S. Insulation, Inc. v. Hilro Construction Co.*,¹⁴⁰ the court held that arbitration clauses should be construed liberally, and any doubts concerning the arbitrability of a dispute should be resolved in favor of arbitration.¹⁴¹ When Hilro declared its contract with USI to be "null and void,"¹⁴² USI brought an action for damages caused by Hilro's alleged repudiation of the contract. Hilro, in turn, moved to compel arbitration and stay court proceedings. USI argued that the arbitration provision applied only to disputes arising during the course of performance and not to controversies arising prior to the commencement of performance, as the arbitration clause covered "work done" and "material or services furnished."¹⁴³ Because the contract had been declared "null and void," USI claimed that no performance had occurred and thus, there was no duty to arbitrate. The court initially noted that parties are bound to arbitrate only the issues which by clear language of the provision are subject to arbitration, and that agreements to arbitrate will not be extended by construction or implication.¹⁴⁴ The court determined, however, that prior case law mandated a liberal construction of arbitration clauses so that any doubts concerning the arbitrability of a dispute should be resolved in favor of arbitration.¹⁴⁵ The court held, therefore, that in the absence of language expressly restricting the provision to disputes arising during performance, no such restriction should be found.¹⁴⁶

In *Beemik Builders & Constructors, Inc. v. Huber Plumbing, Inc.*,¹⁴⁷ the parties' subcontract for plumbing work contained an arbitration clause which provided for arbitration of claims, disputes, or other questions arising out

136. *Id.* at 339.

137. *Id.* at 341.

138. *Id.*

139. *Id.*

140. 146 Ariz. 250, 705 P.2d 490 (1985).

141. *Id.* at ___, 705 P.2d at 498.

142. *Id.* at ___, 705 P.2d 492.

143. *Id.* at ___, 705 P.2d at 498.

144. *Id.*

145. *Id.*

146. *Id.* at ___, 705 P.2d at 499.

147. 476 So. 2d 780 (Fla. Dist. Ct. App. 1985).

of or relating to the subcontract. A dispute arose over services performed by the subcontractor beyond those originally covered in the subcontract. The court held that the dispute was within the language of the arbitration clause.¹⁴⁸

In *Kostakos v. KSN Joint Venture No. 1*,¹⁴⁹ the court held that the broad language of the arbitration agreement contained in a joint venture contract extended to disputes that did not directly arise out of the joint venture.¹⁵⁰ The joint venture owned Point West Condominiums and was a limited partner in a limited partnership which was to develop the condominiums. The arbitration agreement in the joint venture contract encompassed all disputes "arising out of or regarding this Agreement or the Property."¹⁵¹ Subsequently, disputes arose regarding the joint venture and the limited partnership. The plaintiff contended that only those claims arising out of the joint venture agreement were arbitrable as only the joint venture contract contained an arbitration clause.¹⁵² The court, however, reasoned that whether the property referred to in the arbitration clause was defined as the limited partnership share owned by the joint venture, or the actual real estate owned by the joint venture,¹⁵³ the claims all ultimately involved the joint venture by virtue of its ownership of the limited partnership share.¹⁵⁴ Therefore, the court held that all the claims were sufficiently related to the joint venture agreement to come within the joint venture arbitration clause.¹⁵⁵

In *Wessell Brothers Foundation Drilling Co. v. Crossett Public School District*,¹⁵⁶ the court held that an arbitration agreement should be interpreted to include not only disputes which fall within the strict language of the agreement, but also those which fall within its spirit.¹⁵⁷ In *Wessell*, the School District entered into a contract with an architectural firm and a general contractor for the construction of a school building. When the building began showing serious structural defects, the School District sued the architectural firm and the general contractor. The general contractor filed a third party complaint against its subcontractor, Wessell. All parties subsequently entered into an agreement to arbitrate covering controversies "more specifically described" in the pleadings.¹⁵⁸ The arbitrator issued an award holding Wessell liable to the School District.¹⁵⁹ Based upon the arbitration provision, however,

148. *Id.* at 781.

149. 142 Ill. App. 3d 533, 491 N.E.2d 1322 (1986).

150. *Id.* at 538, 491 N.E.2d at 1326.

151. *Id.*

152. *Id.*

153. *Id.*

154. *Id.*

155. *Id.* at 539, 491 N.E.2d at 1327.

156. 287 Ark. 415, 701 S.W.2d 99 (1985).

157. *Id.* at 418, 701 S.W.2d at 101.

158. *Id.* at 417-18, 701 S.W.2d at 100-01.

159. *Id.* at 418, 701 S.W.2d at 101.

Wessell argued that since the School District never filed a complaint against Wessell directly, Wessell could not be bound by the arbitration award. The court held that Wessell's contention did not withstand careful scrutiny, for the provision did not say the arbitration was to be strictly controlled by the pleadings.¹⁶⁰ Rather, the pleadings were to further explain the disputed issues.¹⁶¹ The court, in noting that the rules of contract construction and interpretation apply to arbitration agreements, sought to give effect to the intent of the parties.¹⁶² The court stated that "arbitration agreements will not be construed within the strict letter of the agreement but will include subjects within the spirit of the agreement. Doubts and ambiguities of coverage should [therefore] be resolved in favor of arbitration."¹⁶³

Despite the policy of broad interpretation of arbitration clauses, courts refuse to hold that an issue is arbitrable where the language of an agreement reflects the parties' intent not to subject that issue to arbitration.¹⁶⁴ In *Lodge No. 822, International Association v. City of Quincy*,¹⁶⁵ the union filed a grievance with the city alleging the the city hired temporary employees in order to circumvent the collective bargaining agreement, and the union then sued in circuit court to compel the city to submit the matter to arbitration in compliance with the collective bargaining agreement. The city argued that: (1) temporary employees were not covered by the collective bargaining agreement, and (2) the city's policy of hiring temporary employees to replace permanent ones was therefore not an arbitrable matter.¹⁶⁶ The appellate court found that the collective bargaining agreement did not address the propriety of hiring temporary employees¹⁶⁷ and that it expressly reserved to the city all powers not limited by the agreement.¹⁶⁸ Furthermore, the arbitration clause itself stated that the arbitrator could not modify the collective bargaining agreement.¹⁶⁹ The court stated that regardless of the presumption in favor of arbitration in labor disputes, the parties cannot be compelled to arbitrate a dispute which they have not contracted to submit to arbitration.¹⁷⁰ Therefore, disputes about hiring temporary employees were not arbitrable.¹⁷¹

In *Bernard v. Kuhn*,¹⁷² a shareholder's agreement provided for binding arbitration and assessed costs to the losing party. The agreement provided

160. *Id.*

161. *Id.*

162. *Id.*

163. *Id.* at 418, 701 S.W.2d at 101.

164. *Lodge No. 822, Int'l Ass'n v. City of Quincy*, 137 Ill. App. 3d 425, 484 N.E.2d 464 (1985).

165. *Id.*

166. *Id.* at 426, 484 N.E.2d at 466.

167. *Id.* at 430, 484 N.E.2d at 467.

168. *Id.* at 430, 484 N.E.2d at 468.

169. *Id.*

170. *Id.*

171. *Id.*

172. 65 Md. App. 557, 501 A.2d 480 (1985)

that the losing party's responsibility for payment of the costs was to be reflected in the arbitrator's decision.¹⁷³ The arbitrator, in contravention of the agreement, also ordered that the arbitration costs be split between the parties and that each party pay his own legal fees.¹⁷⁴ Following an application to modify, the court found that "the allocation of costs was neither disputed nor submitted to the arbitrator for resolution."¹⁷⁵ Because the parties specifically provided for the payment of costs by the losing party in their arbitration agreement, it was not within the discretion of the arbitrator to render a contrary decision.¹⁷⁶

C. *Effect of Res Judicata and Collateral Estoppel*

The doctrines of res judicata and collateral estoppel may be employed to preclude arbitration of a grievance.¹⁷⁷ In *Monmouth Public Schools District No. 38 v. Pullen*,¹⁷⁸ Pullen was on maternity leave for the first semester of the 1981-82 school year. During the 1982-83 school year, Pullen filed a grievance complaining that she was denied credit for the 1981-82 school year on the salary schedule. The arbitrator concluded that the grievance had not been timely filed.¹⁷⁹ During the 1983-84 school year, Pullen then filed another grievance, making the same claim. The School District contended that this second grievance was barred from arbitration by the doctrines of res judicata and collateral estoppel.¹⁸⁰ The court first declared that a court, not an arbitration panel, is the appropriate tribunal to determine the res judicata and collateral estoppel effect of a prior arbitration award.¹⁸¹ The court then concluded that the doctrines of collateral estoppel and res judicata do apply to issues actually contested and decided in an earlier arbitration.¹⁸² As a result, Pullen was denied arbitration of her claim for 1983-1984.¹⁸³

IV. COMPELLING AND STAYING PROCEEDINGS

A. *Compelling Arbitration*

Arbitration agreements, to be effective, must be enforceable against the parties to the agreement. To achieve that end, courts order specific perform-

173. *Id.* at 560, 501 A.2d at 481.

174. *Id.* at 561, 501 A.2d at 482.

175. *Id.* at 563, 501 A.2d at 483.

176. *Id.*

177. *Monmouth Public Schools, Dist. No. 38 v. Pullen*, 141 Ill. App. 3d 60, 489 N.E.2d 1100 (1985).

178. *Id.*

179. *Id.* at 62, 489 N.E.2d at 1101.

180. *Id.*

181. *Id.* at 65, 489 N.E.2d at 1103.

182. *Id.* at 67, 489 N.E.2d at 1103-06.

183. A "specially concurring" opinion stated that even though res judicata does prevent arbitrability of Pullen's claim, a more equitable result would be to treat claims for separate years as separate causes of action. *Id.* at 70, 489 N.E.2d at 1107.

ance of contractual arbitration agreements by compelling arbitration. Under the UAA, a party may compel arbitration by showing the existence of an agreement to arbitrate and the other party's refusal to arbitrate.¹⁸⁴

1. Party Determination

An insured is not required to join both of its insurance carriers in a suit to compel arbitration.¹⁸⁵ In *Balarin v. Allstate Insurance Company*,¹⁸⁶ the insured sought to compel arbitration on an underinsured motorist claim against only one of its two underinsured motorist carriers. Upon the insured's refusal to amend to add the second carrier, the trial court dismissed the complaint. The appellate court reversed, holding that the insured was not required to join the second underinsured motorist carrier as a necessary party.¹⁸⁷

A plaintiff is entitled to a second arbitration proceeding against a third party if the third party was not indispensable to the first arbitration.¹⁸⁸ In *Mitchell v. Prudential Property & Casualty Insurance Company*,¹⁸⁹ plaintiff was denied recovery in a first arbitration proceeding against the driver of the car with which he collided. Plaintiff then claimed that an unidentified parked truck obstructed his view of the intersection where the accident happened, causing him to collide with the car. Consequently, the plaintiff sought a second arbitration proceeding against Prudential, his uninsured motorist carrier. Prudential argued that the driver of the unidentified parked truck was an indispensable party and failure to join him in the first arbitration precluded a second proceeding.¹⁹⁰ The appellate court held that the driver of the unidentified truck was not an indispensable party to the first arbitration proceeding, as arbitration proceedings are not bound by the technical rules of civil procedure unless the parties so provide in their arbitration agreement.¹⁹¹

2. Contract Determination

Arbitration will be compelled if there is no substantial issue as to the agreement to arbitrate.¹⁹² In *Beemik Builders & Constructors, Inc. v. Huber*

184. UAA § 2.

185. *Balarin v. Allstate Ins. Co.*, 481 So. 2d 1263 (Fla. App. 1986).

186. *Id.*

187. *Id.*

188. *Mitchell v. Prudential Property & Casualty Ins. Co.*, 346 Pa. Super. 327, 449 A.2d 632 (1985).

189. *Id.*

190. *Id.* at ____, 449 A.2d at 633-34.

191. *Id.* at ____, 449 A.2d at 636.

192. *Beemik Builders & Construction, Inc. v. Huber Plumbing Inc.*, 476 So. 2d 780 (Fla. Dist. Ct. App. 1985).

*Plumbing, Inc.*¹⁹³ a provision of the subcontract between the general contractor and subcontractor provided for arbitration of all claims, disputes or other questions arising out of or relating to the subcontract. When a dispute arose, the general contractor filed a motion to compel arbitration. The trial court denied the motion. The appellate court reversed, holding that defendant had failed to show that a substantial issue existed as to whether the agreement to arbitrate was made.¹⁹⁴

B. *Staying Judicial Proceedings*

Any legal proceeding involving an arbitrable issue shall be stayed when an order to compel arbitration has issued or when an application for such an order has been made.¹⁹⁵ Therefore, an order compelling arbitration will generally be accompanied by an order to stay legal proceedings pending the outcome of the arbitration. If the legal proceeding includes issues unrelated to the arbitration, those issues may be severed, with the stay applying only to the arbitrable issues.¹⁹⁶

In *Bishara v. Brown, Daltas & Associates*,¹⁹⁷ the court held that the extent of the factual issues in dispute precluded a stay of the proceedings.¹⁹⁸ In *Bishara*, an engineer for a construction project brought an action against his employer on various tort and contract theories of recovery. The employer filed a motion to stay the legal proceedings pending arbitration. Because numerous factual issues relating to arbitrability were in dispute, it was unclear whether arbitration was appropriate.¹⁹⁹ The trial court therefore denied the motion for a stay, and the defendant employer appealed. The appellate court noted that most commonly the facts relating to arbitrability will either be undisputed or resolvable upon the filing of affidavits.²⁰⁰ In *Bishara*, however,

193. *Id.*

194. *Id.* at 781.

195. UAA § 2(d) provides:

Any action or proceeding involving an issue subject to arbitration shall be stayed if an order for arbitration or an application therefor has been made under this section or, if the issue is severable, the stay may be with respect thereto only. When the application is made in such action or proceeding, the order for arbitration shall include such stay.

196. *Id.*

197. 21 Mass. App. Ct. 941, 486 N.E.2d 761 (1985).

198. *Id.*

199. *Id.* at ____, 486 N.E.2d at 763. Factual issues in dispute included allegations by plaintiff Bishara that the defendant had fired him without notice, coerced him into dropping a complaint filed by him with an arbitration tribunal, unlawfully withheld his identification card and threatened his life. In addition, it was unclear whether the arbitration clause in Bishara's employment contract applied only to the contract issues or applied to Bishara's tort claims as well. *Id.* at ____, 486 N.E.2d at 762-63.

200. *Id.* at ____, 486 N.E.2d at 763.

multiple issues remained unresolved, leaving the question of arbitrability unanswered. The court held that further clarification of the facts would be necessary before a decision to grant or deny the motion to stay could be made.²⁰¹ The appellate court affirmed the trial court's denial of the motion to stay judicial proceedings.²⁰²

In *Kostakos v. KSN Joint Venture No. 1*,²⁰³ the court held that when arbitrable and nonarbitrable issues become so interrelated as to adversely affect a complete resolution of the dispute, then the trial court is within its discretion to stay the entire proceeding pending arbitration.²⁰⁴ This is true even though the issues might otherwise be deemed severable.²⁰⁵ Plaintiff had entered into a joint venture agreement with the defendants. The agreement contained an arbitration clause. Subsequently, plaintiff made several loans to the defendants and made additional investments. Plaintiff later brought an action alleging, among other things, that the defendants had made false representations to induce investments, misapplied assets, and fraudulently concealed information. In their answer, the defendants asserted their right to arbitration and filed a motion to compel arbitration and to stay all other proceedings.²⁰⁶ The trial court granted the motion, and the plaintiff appealed. The appellate court affirmed, stating that although some of the claims did not fall under the arbitration agreement, each claim was so interrelated with the others that it could not be resolved independently.²⁰⁷ In reaching its decision, the appellate court stressed both the need for judicial economy²⁰⁸ and the favored status of arbitration as a means to resolve disputes.²⁰⁹

C. *Staying Arbitration*

The UAA provides that a court may stay an arbitration proceeding commenced or threatened if there is a showing that there is no agreement to arbitrate.²¹⁰ If there is a substantial and bona fide dispute as to the existence of an agreement to arbitrate, the court will summarily try the issue

201. *Id.*

202. *Id.*

203. 142 Ill. App. 3d 533, 491 N.E.2d 1322 (1986).

204. *Id.* at 538, 491 N.E.2d at 1326.

205. *Id.*

206. *Id.* at 535, 491 N.E.2d at 1322.

207. *Id.* at 540, 491 N.E.2d at 1327.

208. *Id.* at 538, 491 N.E.2d at 1326.

209. *Id.* at 536, 491 N.E.2d at 1325.

210. UAA § 2.

and either order the stay, or alternatively, order the parties to proceed to arbitration.²¹¹

The doctrines of res judicata and collateral estoppel may provide the basis for an order staying arbitration. In *Monmouth Public School, District No. 38 v. Pullen*,²¹² the school district filed an action seeking a permanent stay of a pending grievance arbitration. The school district asserted that the grievance had already been arbitrated and that a second arbitration proceeding was barred by res judicata and collateral estoppel. The court held that the pending arbitration should be stayed, as it was barred by res judicata and collateral estoppel.²¹³

V. ARBITRATION PROCEEDINGS

Parties may specify in their arbitration agreement the procedures to be used in their arbitration hearing.²¹⁴ If the agreement does not set forth procedures, Section Five of the UAA describes the procedures to be used.²¹⁵

In *Pennsylvania Social Services Union v. Commonwealth of Pennsylvania Board of Probation and Parole*,²¹⁶ the court held that the exclusionary rule of evidence is not applicable in arbitration proceedings.²¹⁷ The court set forth three reasons for the rule's inapplicability. First, the court noted that the exclusionary rule is a remedy, not a right, and traditionally has been

211. *Id.*

212. 141 Ill. App. 3d 60, 489 N.E.2d 1100 (1985).

213. *Id.* at 69-70, 489 N.E.2d at 1106.

214. UAA § 5.

215. UAA § 5 provides:

Unless otherwise provided by the agreement:

(a) The arbitrators shall appoint a time and place for the hearing and cause notification to the parties to be served personally or by registered mail not less than five days before the hearing. Appearance at the hearing waives such notice. The arbitrators may adjourn the hearing from time to time as necessary and, on request of a party and for good cause, or upon their own motion may postpone the hearing to a time not later than the date fixed by the agreement for making the award unless the parties consent to a later date. The arbitrators may hear and determine the controversy upon the evidence produced notwithstanding the failure of a party duly notified to appear. The court on application may direct the arbitrators to proceed promptly with the hearing and determination of the controversy.

(b) The parties are entitled to be heard, to present evidence material to the controversy and to cross-examine witnesses appearing at the hearing.

(c) The hearing shall be conducted by all the arbitrators but a majority may determine any question and render a final award. If, during the course of the hearing, an arbitrator for any reason ceases to act, the remaining arbitrator or arbitrators appointed to act as neutrals may continue with the hearing and determination of the controversy.

216. 93 Pa. Commw. 272, 508 A.2d 360 (1986).

217. *Id.* at ____, 508 A.2d at 364.

available only in criminal proceedings.²¹⁸ Second, the court stated that the law in the area of unreasonable searches and seizures is too complex to expect arbitrators to apply it.²¹⁹ Third, using a cost-benefit analysis, the court held that the minimal deterrent effect on the police resulting from the possibility of having evidence excluded at a labor arbitration proceeding is greatly outweighed by the potential cost of applying the exclusionary rule.²²⁰

In *Mitchell v. Prudential Property & Casualty Insurance Company*,²²¹ the Pennsylvania Superior Court held that the rules of compulsory joinder of parties do not apply in arbitration proceedings.²²² In *Mitchell*, appellant was involved in an automobile accident and went to arbitration with the driver of the other car. The arbitration panel rendered an award against appellant. Appellant then sought another arbitration hearing under his uninsured motorist policy, asserting that a parked truck had been the cause of the accident. Respondent insurance company contended that the unidentified owner of the parked truck was an indispensable party, and that failure to join him in the first arbitration precluded a second proceeding. The court rejected this argument, holding that the formal rules of civil procedure do not apply to arbitration proceedings.²²³ The parties to an arbitration agreement are free to provide in their agreement for compulsory joinder, but if they fail to do so, the court will not read the requirement into their agreement.²²⁴

In *Endicott Education Association v. Endicott School Dist.*,²²⁵ the court refused to limit an arbitrator's award to what was requested in the complaint.²²⁶ The arbitrator awarded monetary compensation to the plaintiff-schoolteacher because she had been denied her preparation period during the school day. The School District contested the award on the ground that the arbitrator had exceeded his authority by awarding monetary damages as the plaintiff had not requested them in her original complaint.²²⁷ The court de-

218. *Id.* at ___, 508 A.2d at 363.

219. *Id.* at ___, 508 A.2d at 364.

220. *Id.* at ___, 508 A.2d at 364. In this case, the appellant was hired by the state Board of Probation and Parole to work with paroled convicts and subsequently began dealing drugs to them. If the evidence were excluded, there would be no means of recourse for the state. *Id.* The court noted that the appellant still had a possible cause of action for damages under 42 U.S.C. § 1983 for any damages resulting from an illegal search and seizure. *Id.*

221. 346 Pa. Super. 327, 499 A.2d 632 (1985).

222. *Id.* at ___, 499 A.2d at 636.

223. *Id.*

224. The court noted that even had they followed the formal compulsory joinder rule, the unidentified driver would not have fallen within its provisions. *Id.*

225. 43 Wash. App. 392, 717 P.2d 763 (1986).

226. *Id.*

227. *Id.* at 394, 717 P.2d at 765-66. The Court of Appeals found that the School District was not denied notice and opportunity to present evidence on the issue of damages because the alleged breach of the contract was sufficient notice to the District. *Id.*

clined to limit the remedies available to the arbitrator. The court stated that the only limits on an arbitrator's award are "those of his creativity subject to the bounds of [the law] . . . and the negotiated contract."²²⁸

In *Austin v. R. L. Stovall*,²²⁹ the court held that when a party violates the procedure set forth in the arbitration act for appointing an arbitrator, the award may be declared a nullity.²³⁰ In *Austin*, respondent unilaterally dismissed the arbitrator initially chosen by the parties and appointed a new one without the consent of appellant. Appellant did not participate in proceedings before the new arbitrator. The court held that under Florida law, both the proceedings and the award were nullities because respondent's actions violated the procedures for appointing an arbitrator prescribed by the state arbitration act.²³¹

Generally, arbitrators are shielded by immunity.²³² The court in *Grane v. Grane*,²³³ however, held that arbitral immunity does not attach if there is not a valid arbitration agreement between the parties. In *Grane*, the parties had provided in their contract that Thomas Boodell would be the arbitrator in the event that a dispute arose. It was plaintiff's contention, however, that Boodell himself had fraudulently induced plaintiff into entering into the arbitration agreement. Plaintiff sued for rescission of the contract and sued Boodell for fraudulent inducement.²³⁴ The court held that Boodell was not immune to suit, absent a valid arbitration agreement.²³⁵

In *Township of Moon v. Police Officers of the Township of Moon*,²³⁶ the court held that the procedures described in Section Five of the UAA may be used in grievance arbitration hearings under Pennsylvania Act 111,²³⁷ which controls collective bargaining for police and firefighters.²³⁸ While Section Five of the UAA is not controlling under Act 111, the court found no reason why an interest arbitration board could not adopt Section Five procedures for its grievance hearings.²³⁹

VI. CONFIRMATION AND VACATION OF AWARDS

After an arbitrator's decision has been rendered, the prevailing party will usually seek confirmation of the award by a trial court. A court must

228. *Id.* at 395, 717 P.2d at 763-64.

229. 475 So. 2d 1014 (Fla. Dist. Ct. App. 1985).

230. *Id.* at 1015.

231. *Id.* (citing FLA. STAT. ANN. §§ 682.04, .13 (West 1986)).

232. *Grane v. Grane*, 143 Ill. App. 3d 979, 493 N.E.2d 1112 (1986).

233. *Id.*

234. *Id.* at 980-81, 493 N.E.2d at 1114.

235. *Id.* at 988, 493 N.E.2d at 1119.

236. 508 Pa. 495, 498 A.2d 1305 (1985).

237. The Act of June 24, 1968, P.L. 237 as amended, 43 PA. CONS. STAT. ANN. §§ 217.1 to .10 (Purdon 1986).

238. *Township of Moon*, 508 Pa. at ____, 498 A.2d at 1309.

239. *Id.*

confirm an arbitration award upon application by a party unless the opposing party presents sufficient grounds for modifying or vacating an award.²⁴⁰

The UAA lists five independent grounds a party may use as the basis for vacation of an award.²⁴¹ The motion to vacate must set out with particularity one or more of the five specified grounds, and the burden for proving grounds for vacation rests with the moving party.²⁴² Courts narrowly construe grounds for vacation.²⁴³

A. *Misconduct and Partiality*

An award may be vacated upon a showing of evident partiality by an arbitrator, corruption in any of the arbitrators, or misconduct prejudicing the rights of a party.²⁴⁴ A party seeking to vacate an award on the basis of arbitrator misconduct must prove the occurrence of the act which constituted the misconduct, and prejudice to the party as a result.²⁴⁵ In an action to vacate an award due to partiality, the moving party must prove facts beyond mere speculation.²⁴⁶ Such facts must be sufficient to permit an inference that there was in fact partiality by an arbitrator.²⁴⁷

240. UAA § 11 states: Upon application of a party, the Court shall confirm an award, unless within the time limits hereinafter imposed grounds are urged for vacating or modifying or correcting the award, in which case the court shall proceed as provided in Sections 12 and 13.

241. UAA § 12(a) provides:

Upon application of a party, the court shall vacate an award where:

- (1) The award was procured by corruption, fraud, or other undue means;
 - (2) There was evident partiality by an arbitrator appointed as a neutral or corruption in any of the arbitrators or misconduct prejudicing the rights of any party;
 - (3) The arbitrators exceeded their powers;
 - (4) The arbitrators refused to postpone the hearing upon sufficient cause being shown therefore or otherwise so conducted the hearing, contrary to the provisions of Section 5, as to prejudice substantially the rights of a party; or
 - (5) There was no arbitration agreement and the issue was not adversely determined in proceedings under Section 2 and the party did not participate in the arbitration hearing without raising the objection;
- but the fact that the relief was such that it could not or would not be granted by a court of law or equity is not ground for vacating or refusing to confirm the award.

242. *Turner v. Nicholson Properties, Inc.*, 80 N.C. App. 708, ___, 341 S.E.2d 42, 45 (1986).

243. *Recent Developments* 1984, *supra* note 4, at 255.

244. UAA § 12(a)(2).

245. *Fort Wayne Community Schools v. Fort Wayne Educ. Ass'n*, 490 N.E.2d 337, 340 (Ind. Ct. App. 1986).

246. *Wyndham v. Haines*, 305 Md. 269, 279, 503 A.2d 719, 724-25 (1986).

247. *Id.* at 279, 503 A.2d at 725.

In *Littlejohn v. Keystone Ins. Co.*,²⁴⁸ the court held that discussion of a settlement agreement with the arbitrators did not constitute misconduct under the Pennsylvania UAA. Plaintiff alleged that defendant had improperly informed the arbitrators of the settlement that plaintiff recovered in a separate action against a third party driver. The court held that the standards applicable at law concerning the disclosure of the settlement were controlling, noting that the Pennsylvania no-fault act allowed a trier-of-fact to be informed of a plaintiff's receipt of benefits which were in addition to those for which he had instituted suit.²⁴⁹ Since the no-fault act was in effect at the time of the arbitration proceedings, the court affirmed the trial court's denial of Littlejohn's motion to vacate the award, finding that discussion of plaintiff's settlement did not constitute misconduct.²⁵⁰

In *Fort Wayne Community Schools v. Fort Wayne Education Association*,²⁵¹ the court held that the party seeking to have the award vacated must show not only misconduct by the arbitrator, but must also affirmatively show that the party was in fact prejudiced by the misconduct. A mere inference of prejudice from the facts is insufficient.²⁵² In *Fort Wayne*, the party seeking to have the award vacated alleged that the arbitrator had slept during the testimony of one of its expert witnesses.²⁵³ Noting that several other experts had testified on the same topic and that the arbitrator's decision contained material substantially similar to that contained in the expert's affidavit, the court found that the party had failed to show how it had in fact been prejudiced.²⁵⁴

In *Wyndham v. Haines*,²⁵⁵ the court held that a party seeking vacation of an award based upon partiality must prove evident partiality through facts sufficient to permit an inference of partiality.²⁵⁶ Wyndham, a medical malpractice claimant, filed a petition to vacate a Health Claims Arbitration award alleging that the panel chairman failed to act in a neutral and impartial manner. Subsequent to his appointment, the panel chairman had been retained as private counsel to two different medical malpractice plaintiffs in unrelated cases. The panel chairman's opposing counsel in the two cases was also counsel to the defendant in the arbitration. Fearing that the panel chairman's desire to maintain good rapport with defense counsel in the settlement of the two unrelated cases might influence his decision in the arbitration,

248. 353 Pa. Super. 63, 509 A.2d 334 (1986).

249. *Id.* at —, 509 A.2d at 337.

250. *Id.* at —, 509 A.2d at 337-38.

251. 490 N.E.2d 337 (Ind. Ct. App. 1986).

252. *Id.* at 340.

253. *Id.* at 339.

254. *Id.* at 340.

255. 305 Md. 269, 503 A.2d 719 (1986).

256. *Id.* at 279, 503 A.2d at 725.

Wyndham's counsel unsuccessfully sought disqualification of the panel chairman.²⁵⁷ The trial court denied Wyndham's petition to vacate the award, finding no reason to believe that the chairman was biased or could not render a fair and impartial decision.²⁵⁸ In affirming, the appellate court noted that "[t]he establishment of 'evident partiality' requires more than speculation and bald allegations of bias. The moving party must prove facts sufficient to permit an inference that there was indeed partiality by an arbitrator."²⁵⁹

In *Turner v. Nicholson Properties*,²⁶⁰ the court upheld confirmation of an arbitrator's award despite evidence that the arbitrator had previously appeared as an expert witness for opposing counsel's law firm.²⁶¹ In *Turner*, Turner filed for arbitration with the American Arbitration Association pursuant to an arbitration agreement with Nicholson Properties, and the parties selected a mutually agreeable arbitrator. Thereafter, Turner obtained counsel. The arbitrator had previously appeared as an expert witness for Turner's counsel's law firm. The arbitrator informed the Association of the previous dealings with Turner's counsel. The Association assessed the situation and determined that the arbitrator was qualified to serve impartially.²⁶² The arbitrator issued an award in favor of Turner. Nicholson Properties moved to vacate the arbitrator's award on the grounds that the arbitrator was biased. The court held that the arbitrator's indirect association with Turner's counsel was correctly labeled by the Association as neither current, continuing nor substantial. Thus, the arbitrator was qualified to make an impartial assessment of the dispute.²⁶³

B. Arbitrators Exceeded Their Powers

Arbitrators' powers are defined by the arbitration agreement. An award may be vacated upon a showing that the arbitrators exceeded their powers.²⁶⁴

In *Hetrick v. Weimer*,²⁶⁵ the court held that the arbitrators did not exceed their powers by issuing an award against a party who had settled with the claimant prior to arbitration. In *Hetrick*, the claimant alleged that an obstetrician, a pediatrician and a hospital were liable for malpractice. The claimant settled with the obstetrician prior to the arbitration hearing. The arbitrators, however, found that the obstetrician was solely liable.²⁶⁶ The

257. *Id.* at 277-78, 503 A.2d at 724.

258. *Id.* at 279, 503 A.2d at 724.

259. *Id.* at 279, 503 A.2d at 724-25.

260. 80 N.C. App. 208, 341 S.E.2d 42 (1986).

261. *Id.* at ___, 341 S.E.2d at 44.

262. *Id.* at ___, 341 S.E.2d at 43.

263. *Id.* at ___, 341 S.E.2d at 44.

264. UAA § 12(a)(3).

265. 67 Md. App. 522, 508 A.2d 522 (1986).

266. *Id.* at 528, 508 A.2d at 525.

claimant moved to vacate the award, arguing that an award against the obstetrician alone was beyond the scope of the arbitrators' authority.²⁶⁷ The appellate court held that although the award was unnecessary because the claimant had previously settled with the obstetrician, it was not beyond the arbitrators' authority.²⁶⁸

In *State Farm Fire and Casualty Co. v. Wise*,²⁶⁹ the court held that the arbitrator did not exceed his power in awarding punitive damages. In *State Farm*, the arbitrator awarded both compensatory and punitive damages. The insured moved for confirmation of the award. State Farm then attempted to vacate the award on the grounds that the arbitrator exceeded his authority as the insurance policy contained no provision for punitive damages.²⁷⁰ The court held that since punitive damages were not specifically excluded by the policy, the arbitrator did not exceed his authority.²⁷¹

An arbitrator will not be held to have exceeded his powers if he has based his decision on proper grounds.²⁷² In *Missouri Mining, Inc. v. St. Joseph Light & Power Co.*,²⁷³ a dispute arose between the parties over a contract to supply coal. The contract provided that the mining company was to supply coal with a sulfur content of less than 3.5 percent to the power company. After consistently receiving coal that fell below contract standards, the power company refused to accept future coal shipments from the mining company. Pursuant to an earlier agreement, arbitration commenced in order to determine whether the mining company had failed to perform pursuant to the contract. Evidence of both excessive sulfur content and excessive sulfur dioxide emission levels was received by the arbitrator. After receiving a favorable decision, the power company moved to have the arbitration award confirmed by a trial court. The mining company moved for vacation of the award contending that the arbitrator exceeded his powers by basing the award on excessive sulfur dioxide emissions when the proper focus of arbitration should have been the excessive sulfur content of the coal. The court of appeals affirmed confirmation of the arbitration award.²⁷⁴ The court agreed that had the arbitrator based his decision on excessive sulfur dioxide emissions he would have exceeded his powers.²⁷⁵ However, there was sufficient evidence that the arbitration award was correctly based upon the excessive sulfur content of the coal.²⁷⁶

267. *Id.* at 530-32, 508 A.2d at 526-27.

268. *Id.*

269. 150 Ariz. 16, 721 P.2d 674 (1986).

270. *Id.* at ____, 721 P.2d at 675.

271. *Id.*

272. *Missouri Mining, Inc. v. St. Joseph Light & Power Co.*, 703 S.W.2d 94 (Mo. Ct. App. 1985).

273. *Id.*

274. *Id.* at 96.

275. *Id.*

276. *Id.*

In *South Conejos School District v. Martinez*,²⁷⁷ the court held that when a collective bargaining agreement gave the arbitrator the power to decide the issue of arbitrability, the arbitrator did not exceed his authority in deciding that issue. Martinez had been employed by the school district as an instructor for about six years when he was granted sabbatical leave for one year. When he returned, the school district refused to reinstate him. Martinez filed a grievance relying on the agreement between the school district and the teachers' association which stated that teachers on sabbatical leave were guaranteed a position when they returned.²⁷⁸ The arbitrator found in favor of Martinez, and the district court affirmed the award.²⁷⁹ The school district appealed alleging the arbitrator had exceeded his powers by finding Martinez was an "employee" under the agreement; if Martinez was not an employee, the matter was not arbitrable.²⁸⁰ The appellate court rejected the school district's allegation because the collective bargaining agreement contained a provision that gave the arbitrator power to decide the question of arbitrability.²⁸¹ The court also held the arbitrator did not exceed his powers by finding Martinez to be an "employee" under the agreement as the arbitrator restricted his findings to interpretation and application of the agreement.²⁸²

C. Refusal to Hear Material Evidence

An award may be vacated upon a showing of refusal by the arbitrator to hear evidence material to the controversy.²⁸³ In *Farm Construction Service, Inc. v. Robinson*,²⁸⁴ defendant alleged that the arbitrator had refused to hear expert rebuttal evidence, but the court found no factual foundation for defendant's allegation in the record.²⁸⁵ The court relied on the uncontested averments of the arbitrators that: "(1) there was no expert evidence which would have been the proper subject of rebuttal and (2) no offer of proof was made describing the proposed expert rebuttal evidence."²⁸⁶

D. No Arbitration Agreement

If no arbitration agreement exists, arbitrators have no authority to resolve disputes. An award may be vacated upon a showing that an arbitrator made an award in absence of an arbitration agreement.²⁸⁷

277. 709 P.2d 594 (Colo. Ct. App. 1985).

278. *Id.* at 595.

279. *Id.*

280. *Id.*

281. *Id.*

282. *Id.* at 595-96.

283. UAA § 12(a)(4).

284. 21 Mass. App. 955, 487 N.E.2d 873 (1986).

285. *Id.*

286. *Id.*

287. UAA § 12(a)(5).

In *Wigod v. Chicago Mercantile Exchange*,²⁸⁸ the court held that while the plaintiff had agreed to adhere to the Chicago Mercantile Exchange's (CME) arbitration rules, these rules did not establish a mandatory arbitration agreement.²⁸⁹ Plaintiff was asked to submit to arbitration after a contract dispute arose with another CME member. Plaintiff informed CME that he would not submit to the jurisdiction of the arbitration committee. The arbitration committee scheduled a hearing, and plaintiff informed CME that he would not appear. Following the hearing, the committee entered an award against plaintiff. Plaintiff brought an action in state court to vacate the award and enjoin its collection. The court held that persons not parties to a valid arbitration agreement cannot be compelled to submit to arbitration.²⁹⁰ When plaintiff became a member of CME, he had signed an agreement to abide by all the rules, orders, and bylaws. The court, however, found that arbitration had not been made compulsory under the express terms of the rules.²⁹¹ Therefore, the court vacated the arbitrator's award on the basis that there was no agreement to arbitrate.²⁹²

In *Elbadramany v. Stanley*,²⁹³ the court held that bylaws of a voluntary association constituted an arbitration agreement between members. In *Elbadramany*, two real estate brokers were in dispute over a commission. Both brokers were members of a local Board of Realtors (Board). The Board's bylaws required professional disputes between members to be submitted to arbitration. Therefore, when the dispute arose, Elbadramany moved for arbitration pursuant to the Board's bylaws. Stanley participated in the hearing but refused to sign a form entitled "Arbitration Agreement." After the arbitrators entered an award for Elbadramany, Stanley moved to vacate the award. The trial court vacated the arbitration award because Stanley had failed to sign the "Arbitration Agreement."²⁹⁴ The appellate court reversed, concluding it was not necessary for Stanley to sign the "Arbitration Agreement" because the Board's bylaws constituted a sufficient arbitration agreement.²⁹⁵ The court held that "a provision in the constitution, charter or bylaws of a voluntary association which requires that disputes between members be submitted to arbitration constitutes a binding agreement between such members to submit future disputes to arbitration."²⁹⁶

In *Hot Springs County School District v. Strube Construction Co.*,²⁹⁷ the

288. 141 Ill. App. 3d 129, 490 N.E.2d 39 (1986).

289. *Id.* at ____, 490 N.E.2d at 41.

290. *Id.*

291. *Id.*

292. *Id.*

293. 490 So.2d 964 (Fla. Dist. Ct. App. 1986).

294. *Id.* at 965.

295. *Id.* at 966.

296. *Id.*

297. 715 P.2d 540 (Wyo. 1986).

court held that participation in the arbitration process constituted a waiver of the right to raise the issue of the existence of an arbitration agreement. In *Hot Springs*, the parties participated in arbitration proceedings. Both parties later moved to vacate the award, arguing that there was no agreement to arbitrate.²⁹⁸ The court held that their participation in the arbitration process constituted a waiver of their right to dispute the existence of an arbitration agreement.¹⁹⁹

E. Errors of Fact or Law

Courts presume that arbitrators have considered relevant law in rendering their awards.³⁰⁰ In *Pierce v. Midwest Family Mutual Insurance Company*,³⁰¹ an insurer contended that the arbitrator's award was based on an error of law in that the panel had failed to apply the setoff provision of the state no-fault statute in its award. The insured had previously collected economic loss benefits under his policy and was seeking to collect under the uninsured motorist provision of the same policy. The court ruled that the setoff provision of the state no-fault statute did apply to arbitration awards, but refused to disturb the award of the arbitrators.³⁰² The court stated that since there was evidence that the panel was aware of the prior payments to the insured, the panel must have considered the amount of setoff allowable before arriving at its award.³⁰³

Absent fraud, an error of fact or law is not a ground for vacating an arbitrator's award.³⁰⁴ In *School Committee of Quincy v. Quincy Education Association*,³⁰⁵ the union sought arbitration of a grievance concerning the interpretation of a collective bargaining agreement. The arbitrator ruled in favor of the School Committee. The superior court, however, vacated the award and remanded on the grounds that the arbitrator had incorrectly interpreted the collective bargaining agreement. On remand, the arbitrator ruled in favor of the union. The School Committee then filed an application to set the award aside, and the union filed a motion to confirm the award. A different superior court vacated the second award. On appeal, the court held that the superior court erred in vacating the arbitrator's first award.³⁰⁶ The court stated that the arbitrator's first award was based on a reasonable

298. *Id.*

299. *Id.* at 546.

300. *Pierce v. Midwest Family Mutual Ins. Co.*, 390 N.W.2d 358 (Minn. Ct. App. 1986).

301. *Id.*

302. *Id.* at 361.

303. *Id.*

304. *School Comm. of Quincy v. Quincy Educ. Ass'n*, 22 Mass. App. 914, —, 491 N.E.2d 672, 674 (1986).

305. *Id.*

306. *Id.*

interpretation of the agreement.³⁰⁷ The court held that even if the interpretation had been wrong, the arbitrator's decision must stand, as courts may not pass on an arbitrator's alleged errors of fact or law.³⁰⁸

In contrast, in *Patrick v. Cherokee Insurance Co.*,³⁰⁹ the court stated that under Pennsylvania law, an award may be vacated as contrary to law when it is such that if it had been the verdict of a jury, the court could have entered a judgment notwithstanding the verdict.³¹⁰ In *Patrick*, the company contended that the arbitration panel had disregarded an endorsement that the company said was part of the insured's policy. The endorsement would have invalidated the uninsured motorist provision of the policy and relieved the company of responsibility in the suit. The court, however, found the endorsement was unsigned and therefore, was not a part of the policy, and the arbitrators had not erred in disregarding the clause.³¹¹

F. Award Would Not Have Been Granted by a Court

The fact that an award could not or would not have been granted by a court is not a ground for vacating or refusing to confirm the award.³¹² In *Prudential-Bache Securities v. Shuman*,³¹³ the defendant attempted to vacate an award by alleging that the award was excessive under substantive law.³¹⁴ In *Prudential-Bache*, an investor won an arbitration award for damages resulting from improper investments made on his behalf by the defendant investment company. The court ruled that even though the award may have been less if determined by a court of law or equity, the arbitrator's award would stand unless the complaining party could demonstrate bias or prejudice on behalf of the arbitrators.³¹⁵

VII. MODIFICATION OF AWARDS

The UAA sets forth specific statutory grounds for modification or correction of an arbitrator's award by the court.³¹⁶ Absent one of the required

307. *Id.*

308. *Id.*

309. 354 Pa. Super. 427, 512 A.2d 24 (1986).

310. *Id.* at ____, 512 A.2d at 25, citing the Pennsylvania Arbitration Act, 42 PA. CONS. STAT. ANN. § 7302(d)(2) (Purdon 1982). The UAA does not contain a parallel provision.

311. *Id.* at ____, 512 A.2d at 27.

312. UAA § 12(a).

313. 483 So. 2d 888 (Fla. Dist. Ct. App. 1986).

314. *Id.* at 889.

315. *Id.*

316. UAA § 13(a) provides:

(a) Upon application made within ninety days after delivery of a copy of

grounds, a court generally will not disturb an arbitrator's award.

A. Miscalculation of Figures

A court will grant modification where there is an evident miscalculation of figures in the award.³¹⁷ In *Althoff, Inc. v. IFG Leasing Co.*,³¹⁸ a diesel truck lessor sought modification to increase its award, claiming that the arbitrator erroneously counted an item twice to the lessee's credit in determining the amount awarded. The court expressed its reluctance to disturb an arbitration award, but held this to be a situation where the Arbitration Act required modification,³¹⁹ as there had been an "evident miscalculation of figures."³²⁰

B. Award Upon a Matter Not Submitted

An award will be modified if the arbitrators awarded upon a matter not submitted to them.³²¹ In *Champion International Corp. v. United Paperworkers International Union*,³²² the union filed a seniority grievance and a scheduling grievance against the company. The seniority grievance was withdrawn prior to the arbitration. The arbitrator, however, ruled in favor of the union on the withdrawn grievance.³²³ On appeal, the court held that it was clear that the arbitrator had ruled on a matter not submitted when he ruled on the withdrawn grievance.³²⁴ Therefore, modification of the award was required.³²⁵

In *Bernard v. Kuhn*,³²⁶ the parties entered into a compensation stipulation prior to arbitration which provided that the losing party would pay

the award to the applicant, the court shall modify or correct the award where:

- (1) There was an evident miscalculation of figures or an evident mistake in the description of any person, thing or property referred to in the award;
- (2) The arbitrators have awarded upon a matter not submitted to them and the award may be corrected without affecting the merits of the decision upon the issues submitted; or
- (3) The award is imperfect in a matter of form, not affecting the merits of the controversy.

317. UAA § 13(a)(1).

318. 704 P.2d 1302 (Wyo. 1985).

319. *Id.* at 1304 (citing Wyo. STAT. § 1-36-115 (1977)).

320. *Id.* at 1305.

321. UAA § 13(a)(2).

322. 779 F.2d 328 (6th Cir. 1985).

323. *Id.* at 330-31.

324. *Id.* at 335.

325. *Id.*

326. 65 Md. App. 557, 501 A.2d 480 (1985).

the arbitrator's fees. The arbitrator, however, ordered both parties to share the fees, as well as other costs involved in the arbitration. The court held that modification of the award was proper because the issue of payment of arbitration fees was never submitted to the arbitrator.³²⁷

C. Award in Conflict with a Statute

A court has the authority to modify an award on the ground that the award conflicts with a state statute only if state law so provides.³²⁸ In *Upper Bucks County Area Vocational-Technical School Joint Committee v. Upper Bucks County Vocational Technical School Education Association*,³²⁹ the Committee and the Association engaged in collective bargaining after the Association had been on strike for 16 instructional days. The Committee approved a calendar for the school year providing 188 days of student instruction. The days lost due to the strike were not made up leaving only 172 instruction days in the school year. The Association sought a declaratory judgment requiring the Committee to operate its school for 180 days in accordance with the Public School Code.³³⁰ The lower court dismissed the action, and the Association filed a grievance seeking back pay for sixteen days—eight days for the Committee's failure to provide 180 days as required by law and eight days for the Committee's failure to reschedule as required by the 188 day calendar.³³¹ The arbitrator awarded the Association back pay for the eight additional days required to meet the 180 day statutory requirement by interpreting the agreement to preclude conflicts with any statutory provision.³³² On appeal, the Committee contended the 180 day rule of the Public School Code did not guarantee teachers a salary for 180 days.³³³ The appeals court noted that its review of an arbitrator's decision requires affirmation if the arbitrator determines the intention of the parties as evidenced by their agreement and surrounding circumstances.³³⁴ However, if the arbitrator's award conflicts with state law, the court has express statutory authority to review and correct or modify the award.³³⁵ Finding the arbitrator awarded the teachers an additional eight days' pay by interpreting the agreement to preclude conflicts with any statute, the Committee was required to

327. *Id.* at 565-66, 501 A.2d at 484.

328. *Upper Bucks County Vocational-Technical School Joint Comm. v. Upper Bucks County Vocational Technical School Educ. Ass'n*, 91 Pa. Commw. 463, 497 A.2d 943 (1985).

329. *Id.*

330. *Id.* at ____, 497 A.2d at 944 n.1.

331. *Id.* at ____, 497 A.2d at 944.

332. *Id.* at ____, 497 A.2d at 945.

333. *Id.*

334. *Id.* at ____, 497 A.2d at 946.

335. *Id.*

comply with the mandatory 180 day requirement set out in the Public School Code.³³⁶

D. Procedural Issues

A party may be estopped from enforcing a trial *de novo* provision in an arbitration agreement where the party previously attempted to modify the award. In *Pierce v. Midwest Family Mutual Ins. Co.*,³³⁷ Pierce attempted to claim benefits under the underinsured motorist provision of his automobile insurance policy. Pursuant to an agreement in the insurance policy, the matter was submitted to arbitration. After receiving a favorable arbitration award, Pierce moved to have the award confirmed by a trial court. Midwest moved to modify the award. The trial court confirmed the arbitration award and denied Midwest's motion to modify. Pursuant to the arbitration agreement Midwest then moved for a trial *de novo* and vacation of the trial court's judgment. The trial court denied both motions. The appellate court affirmed, holding that Midwest was estopped from using the trial *de novo* provision of the policy because it had earlier moved to modify the award.³³⁸ The court reasoned that enforcement of the provision would allow Midwest three opportunities to gain a favorable result: arbitration, motion to modify or vacate, and trial *de novo*. To allow such a result would hinder the ultimate purpose of arbitration: "the voluntary, speedy, informal and relatively inexpensive resolution of disputes."³³⁹

VIII. TIME LIMITATIONS ON MOTIONS TO VACATE OR MODIFY

The UAA provides that if a party seeks to have an arbitration award modified³⁴⁰ or vacated,³⁴¹ it must make application to the courts within 90 days after the award is made. The time period begins with the delivery of a copy of the award to the applicant.³⁴² If the award is being challenged because of "corruption, fraud, or other undue means," however, the time period for filing a motion to vacate begins from the time "such grounds are known or should have been known."³⁴³ If a party fails to challenge the award during the statutory period, it waives the right to later object to the award. If a challenge is being made to the arbitrator's jurisdiction over a dispute, the

336. *Id.*

337. 390 N.W.2d 358 (Minn. Ct. App. 1986).

338. *Id.* at 362-63.

339. *Id.*

340. UAA § 13(a).

341. UAA § 12(b).

342. UAA § 12(b), 13(a).

343. UAA § 12(b).

challenging party must comply with the time limitation.³⁴⁴ If, however, the award is being challenged on the basis that the arbitration proceeding was void, the limitation period will not be enforced.³⁴⁵

In the past, some courts have been hesitant to apply the UAA's limitations period in disputes involving the National Labor Management Relations Act³⁴⁶ (NLMRA).³⁴⁷ Recently, however, some federal courts have shown a disposition toward borrowing the forum state's arbitration statute to determine the time limitations on a motion to vacate or modify an arbitrator's decision.³⁴⁸

If a party fails to object to an arbitrator's award within the 90-day statutory time period, that party may waive any right to challenge the award. In *Walter A. Brown, Inc. v. Moylan*,³⁴⁹ Brown had contracted with Moylan to serve as managing agent for a residence owned by Moylan.³⁵⁰ The contract provided that any dispute between the parties would be resolved by arbitration.³⁵¹ As a result of Brown's subsequent mismanagement of the property, Moylan filed a demand for arbitration.³⁵² After the arbitrator decided in Moylan's favor, Moylan petitioned the superior court for confirmation of the award.³⁵³ Brown did not file an answer to the petition until 107 days after the delivery of the award.³⁵⁴ In affirming the lower court's decision, the appellate court held that since Brown had failed to object within the 90-day statutory time period, the award could not be challenged.³⁵⁵

In *Russell H. Lankton Construction Company v. LaHood*,³⁵⁶ plaintiff contractor won an arbitration award which required defendant make full payment of the award within fifteen days of issuance of a Final Certificate of Payment from an Architect.³⁵⁷ Issuance of the certificate, which assured

344. Local 589, Amalgamated Transit Union v. Mass. Bay Transp. Auth., 397 Mass. 426, 491 N.E.2d 1053 (1986); Burt v. Duval County School Bd., 481 So. 2d 55 (Fla. Dist. Ct. App. 1985).

345. Austin v. Stovall, 475 So. 2d 1014 (Fla. Dist. Ct. App. 1985).

346. 29 U.S.C. §§ 141-197 (1982).

347. See DelCostello v. Int'l Brotherhood of Teamsters, 462 U.S. 151 (1983); Barnett v. United Airlines, 738 F.2d 358 (10th Cir. 1984); Hand v. Int'l Chemical Workers Union, 712 F.2d 1350 (11th Cir. 1983).

348. Champion Int'l. Corp. v. United Paperworkers Int'l Union, 779 F.2d 328 (6th Cir. 1985); Plumber's Pension Fund, Local 130, U.A. v. Domas Mechanical Contractors, 778 F.2d 1266 (7th Cir. 1985); Gencorp, Inc. v. Local 850, United Rubber, 622 F. Supp. 216 (W.D. N.C. 1985).

349. 509 A.2d 98 (D.C. 1986).

350. *Id.* at 98.

351. *Id.*

352. *Id.* at 99.

353. *Id.*

354. *Id.* at 100.

355. *Id.*

356. 143 Ill. App. 3d 806, 493 N.E.2d 714 (1986).

357. *Id.* at —, 493 N.E.2d at 715.

that plaintiff had fulfilled his duties under the contract with defendant, was a condition precedent to defendant's obligation to pay the arbitrator's award. Over a year later, plaintiff filed for judgment on the award. The lower court dismissed the complaint with prejudice, characterizing it as an application for modification which was not filed within the requisite period under the Illinois Arbitration Act.³⁵⁸ The appellate court affirmed, stating in dicta that characterizing a complaint as an application for modification invokes the Arbitration Act's 90-day provision.³⁵⁹

Failure to file a motion to vacate or modify an arbitration award within the 90-day statutory time period may cause the arbitration award to become the law of the case.³⁶⁰ In *Sentry Engineering and Construction, Inc. v. Mariner's Cay Development Corporation*,³⁶¹ Sentry and Mariner's entered into a building contract which contained an arbitration clause.³⁶² When Sentry became concerned about payment, it filed a mechanic's lien against Mariner's for balances due under the contract.³⁶³ Sentry submitted the dispute to arbitration, and simultaneously filed a petition in a circuit court to foreclose its lien.³⁶⁴ The court ordered arbitration of all disputes concerning the building contract.³⁶⁵ After the arbitrator rendered an award in favor of Sentry, the circuit court entered a judgment upon the award and granted summary judgment on Sentry's lien foreclosure petition.³⁶⁶ Mariner's had failed to file a motion to vacate or modify within the 90-day time period, and thus had waived its right to object to the arbitration award.³⁶⁷

A superior court in Pennsylvania held that a challenge to an arbitration award made after Pennsylvania's 30-day statutory time period was untimely.³⁶⁸ In *Beriker v. Permagrain Products, Inc.*,³⁶⁹ a dispute arose between the parties. Permagrain submitted the dispute to arbitration but Beriker maintained that there had been no agreement to arbitrate. Beriker brought an action in the court of common pleas seeking to enjoin the arbitration, but injunctive relief was denied. At the arbitration hearing the arbitrators found that there had been an agreement to arbitrate, and then entered an award

358. *Id.*

359. *Id.* at ____, 493 N.E.2d at 716.

360. *Sentry Engineering & Construction Co. v. Mariner's Cay Dev. Corp.*, 287 S.C. 346, 338 S.E.2d 631 (1985).

361. *Id.*

362. *Id.* at ____, 338 S.E.2d at 632.

363. *Id.*

364. *Id.*

365. *Id.*

366. *Id.* at ____, 338 S.E.2d at 633.

367. *Id.* at ____, 338 S.E.2d at 634.

368. Pennsylvania provides a 30-day time period in which to challenge an award, as opposed to the 90-day limit of UAA § 12(b), 13(a). PA. CONS. STAT. § 7342(b) (1980).

369. 347 Pa. Super. 102, 500 A.2d 178 (1985).

in favor of Beriker. Beriker then filed a motion to confirm the award in the trial court. Permagrain filed an answer to Beriker's petition three months after the date of the arbitrator's decision. The trial court confirmed the arbitration award, holding that Permagrain was too late in filing its petition to challenge the arbitration award.³⁷⁰ On appeal the superior court affirmed, holding that any challenges to the arbitrator's decision had to be made during the 30-day state statutory period following the delivery of the award.³⁷¹ The court held that after 30 days had elapsed, the trial court was obligated to confirm the award upon a motion by either party.³⁷²

Challenges to an arbitrator's jurisdiction to enter an award must be made within the statutory time period for contesting the award.³⁷³ In *Burt v. Duval County School Board*,³⁷⁴ a dispute arose when Duval County school teachers accused the Board of failing to notify the teachers of their responsibility to provide verification of past experience, which is needed for computation of salary schedules. The dispute was submitted to arbitration, and the arbitrator decided in favor of the teachers. Subsequently, the teachers filed a motion in circuit court to confirm the arbitrator's award. The court rejected the award, finding that the dispute was beyond the scope of the current contract.³⁷⁵ On appeal, however, the district court held that the dispute was covered by the contract and was, therefore, arbitrable.³⁷⁶ In addition, the district court found that the Board had waived its right to object to the arbitrator's jurisdiction in any event, because the Board had failed to object within 90 days of the arbitrator's award.³⁷⁷

In *Local 589, Amalgamated Transit Union v. Massachusetts Bay Transportation Authority*,³⁷⁸ a dispute arose between Massachusetts Bay Transit Authority (MBTA) and Local 589 (the union) when MBTA contracted with a private company to perform a reconstruction project.³⁷⁹ The union, which believed that the work should be done by union employees, submitted the dispute to arbitration.³⁸⁰ The arbitrator found in favor of the union.³⁸¹ When

370. *Id.*

371. *Id.*

372. A party may apply for confirmation of an award more than thirty days after the award has been made. The court "shall enter an order confirming the award and shall enter a judgment or decree in conformity with the order." PA. CONS. STAT. § 7342(b) (1980). The court in *Beriker* interpreted the word "shall" as mandating that unless a party has challenged the award during the 30-day period, the court is obligated to confirm. 347 Pa. Super. at ____, 500 A.2d at 179.

373. FLA. STAT. § 682.13 (1983).

374. 481 So. 2d 55 (Fla. Dist. Ct. App. 1985).

375. *Id.* at 56.

376. *Id.* at 58.

377. *Id.*

378. 397 Mass. 426, 491 N.E.2d 1053 (1986).

379. *Id.* at ____, 491 N.E.2d at 1054.

380. *Id.*

381. *Id.* at ____, 491 N.E.2d at 1055.

MBTA refused to comply with the award, the union brought an action in superior court to enforce the award.³⁸² MBTA asserted in its answer that the arbitrator lacked jurisdiction to make the award.³⁸³ The court held that the arbitrator did lack jurisdiction, and therefore set the award aside.³⁸⁴ On appeal, the court found that the award should be reinstated since MBTA had failed to file a motion to vacate within the statutory time period.³⁸⁵ The court held that there should be no judicial exceptions to the statutory time limitation.³⁸⁶ In so holding, the court declined to follow *Painters Local No. 257 v. Johnson Industrial Painting Contractors*.³⁸⁷ In *Painters Local*, the court held that a motion to vacate based upon jurisdictional grounds was not subject to the time period limitation.³⁸⁸ The court in *Amalgamated*, however, stated that since the legislature had chosen not to make any exceptions to the statutory time limitation period, the courts should not create one.³⁸⁹

If an entire award is being attacked because of a void arbitration proceeding, it is not necessary to make a motion to vacate within the statutory time period.³⁹⁰ In *Austin v. Stovall*,³⁹¹ a dispute between Austin and Stovall as to money owed under a subcontract on a construction project was submitted to arbitration.³⁹² When Stovall objected to the choice of arbitrator, he unilaterally dismissed that arbitrator and chose another before whom the arbitration proceedings were conducted.³⁹³ Austin refused to participate in the proceedings, so the arbitration hearing was held without him.³⁹⁴ The arbitrator issued an award in favor of Stovall which was later confirmed in circuit court.³⁹⁵ On appeal, however, the district court reversed, holding that the incorrect method of choosing the new arbitrator had rendered the arbi-

382. *Id.*

383. *Id.*

384. *Id.*

385. *Id.* at ___, 491 N.E.2d at 1057. This case was decided based upon the statute governing collective bargaining agreements which has a 30-day limitation period. MASS. GEN. L. ch. 150(C), § 11(b) (1984). However, the statute is virtually identical to that of commercial arbitration. MASS GEN L. ch. 251, § 12(b) (1984). See *Local 589, Amalgamated*, 397 Mass. at n.2, 491 N.E.2d at 1056 n.2.

386. *Local 589, Amalgamated*, 397 Mass. at ___, 491 N.E.2d at 1056.

387. 16 Mass. Ct. App. 67, 448 N.E.2d 1307 (1983).

388. *Id.* at ___, 448 N.E.2d at 1310.

389. *Local 589, Amalgamated*, 397 Mass. at ___, 491 N.E.2d at 1056.

390. The statutory time period for vacating an award in Florida is 90 days. FLA. STAT. § 682.13 (1983).

391. 475 So. 2d 1014 (Fla. Dist. Ct. App. 1985).

392. *Id.* at 1015, n. 2.

393. *Id.* The appropriate method of appointing an arbitrator is set out in FLA. STAT. § 682.04 (1983). If the agreement does not provide for a method of appointing an arbitrator or if for some reason the arbitrator cannot serve, the court on application of one of the parties will appoint one.

394. *Austin*, 475 So. 2d at 1015.

395. *Id.*

tration proceeding void.³⁹⁶ Therefore, Austin's failure to make a timely motion to vacate, as normally required, did not preclude his attack on the entire award.³⁹⁷

A federal district court in North Carolina³⁹⁸ held that the UAA's ninety day limitations period for filing a motion to vacate an arbitrator's award³⁹⁹ should be applied to disputes involving Section 301 of the National Labor Management Relations Act.⁴⁰⁰ In so doing, the court reached a different conclusion than have other courts addressing the issue.⁴⁰¹ In *Gencorp, Inc. v. Local 850, United Rubber*,⁴⁰² defendant Gencorp discharged two of its employees. The dispute was submitted to arbitration pursuant to an agreement, whereupon the arbitrator determined that the employees should be reinstated.⁴⁰³ Ninety days later, Gencorp filed a petition in federal court to vacate the arbitration decision on the grounds that the arbitrator refused to consider Gencorp's evidence on a particular issue.⁴⁰⁴ Citing various authorities,⁴⁰⁵ the *Gencorp* court noted that since no federal statute of limitations specifically applies to Section 301 of the NLRA, "the timeliness of such a suit [to vacate an arbitration award] is to be governed by the most closely analogous statute of limitations under state law."⁴⁰⁶ The plaintiff employees argued that North Carolina's Voluntary Arbitration of Labor Disputes Statute,⁴⁰⁷ which has a ten day limit, is the most analogous statute of limitations because it is intended to cover labor disputes.⁴⁰⁸ In arguing for the ten day period, plaintiffs contended that, unlike the UAA,⁴⁰⁹ North Carolina's Arbitration Act⁴¹⁰ specifically states that it is inapplicable to agreements between employers and employees, unless the agreement says otherwise.⁴¹¹ If plaintiffs had succeeded in this argument, defendant's application to vacate would have been barred by the ten day time limit because the motion was

396. *Id.*

397. *Id.*

398. *Gencorp, Inc. v. Local 850, United Rubber*, 622 F.Supp. 216 (W.D. N.C. 1985).

399. UAA § 12(b).

400. 29 U.S.C. §§ 141-97 (1982).

401. *DelCostello v. Int'l Bhd. of Teamsters*, 462 U.S. 151 (1983); *Barnett v. United Airlines*, 738 F.2d 358 (10th Cir. 1984); *Hand v. Int'l Chemical Workers Union*, 712 F.2d 1350 (11th Cir. 1983).

402. *Gencorp, Inc.*, 622 F. Supp. 216.

403. *Id.* at 217.

404. *Id.*

405. *DelCostello*, 462 U.S. 151; *Int'l Union, UAW v. Hoosier Cardinal Corp.*, 383 U.S. 696 (1966).

406. *Gencorp, Inc.*, 622 F. Supp. at 217.

407. N.C. GEN. STAT. § 95-36.9 (1983).

408. *Gencorp, Inc.*, 622 F.Supp. at 218.

409. UAA § 1.

410. N.C. GEN. STAT. §§ 1-567.1 to 1-567.20 (1983).

411. N.C. GEN. STAT. § 1-567.2(b)(2) (1983).

not filed until ninety days after the arbitrator's decision. In rejecting plaintiffs' argument, the court concentrated not on the underlying dispute (i.e., the employment contract), but rather on the absence of a statutory limitations period concerning arbitration appeals within the NLRA.⁴¹² The language of the UAA section dealing with vacating awards provides for vacation of an arbitration award on the grounds that the arbitrator refused to hear evidence material to the controversy.⁴¹³ Since Gencorp's motion to vacate was based upon the arbitrator's refusal to consider material evidence,⁴¹⁴ the court held the UAA to be more analogous than the Labor Disputes Statute;⁴¹⁵ therefore, Gencorp's motion to vacate was timely filed.

A United States Court of Appeals has held the time limitations period for filing a motion to vacate an arbitration award in Illinois' version⁴¹⁶ of the UAA⁴¹⁷ applies in a dispute involving Section 301 of the NLRA.⁴¹⁸ In *Plumber's Pension Fund, Local 130, U.A. v. Domas*,⁴¹⁹ plaintiff employees received an arbitration award compelling defendant employer to contribute to several union benefit funds. After the ninety day limitations period within which to contest the award lapsed, defendant filed an appeal, claiming that the arbitration board did not have jurisdiction over the dispute because the employees involved were not covered by the collective bargaining agreement containing the arbitration clause.⁴²⁰ The appellate court considered the effect of the Supreme Court's decision in *DelCostello v. International Brotherhood of Teamsters*⁴²¹ on the application of the UAA to Section 301 disputes.⁴²² In *DelCostello*, the Court applied the NLRA's six month limitations period⁴²³ to a Section 301 dispute, rather than using the forum state's arbitration statute to determine the limitations period. The *DelCostello* Court identified two factors which influenced its decision; Section 160(b) of the NLRA was more analogous to a Section 301 dispute than the state arbitration statute, and important federal policies were at stake.⁴²⁴ The Supreme Court in *DelCostello* expressly noted, however, that *DelCostello* "should not be taken as a departure from prior practice in borrowing limitations periods for federal causes of action, in labor law or elsewhere."⁴²⁵ The Seventh Circuit in *Domas*

412. *Gencorp, Inc.*, 622 F. Supp. at 218-19.

413. UAA § 12(a)(4).

414. *Gencorp, Inc.*, 622 F. Supp. at 217.

415. *Id.* at 219.

416. ILL. ANN. STAT. ch 10, §112(b) (Smith-Hurd 1975).

417. UAA § 12(b).

418. *Plumber's Pension Fund, Local 130, U.A. v. Domas*, 778 F.2d 1266 (7th Cir. 1985).

419. *Id.*

420. *Id.* at 1268.

421. 462 U.S. 151 (1983).

422. *Domas*, 778 F.2d at 1268.

423. 29 U.S.C. § 160(b) (1982).

424. *DelCostello*, 462 U.S. at 166.

425. *Id.* at 171.

relied on this language in *DelCostello* to distinguish the *DelCostello* decision, and applied Illinois' arbitration statute to the dispute, rather than a federal statute.⁴²⁶ The arbitration award was therefore enforced, as defendant's motion to vacate was not filed within the 90 day limit imposed in the Illinois statute.⁴²⁷

In an action brought under Section 301 of the NLRA, federal, law, rather than a state borrowing statute, governs the choice between the forum state's statute of limitations and that of another state.⁴²⁸ In *Champion International Corporation v. United Paperworkers International Union*,⁴²⁹ defendant employees won an arbitration award following a dispute over work scheduling and seniority. Plaintiff Champion filed suit to vacate the arbitration award in a Tennessee district federal court. The dispute arose in Mississippi, and Mississippi's law would have barred Champion's appeal for failure to timely file the motion to vacate. The court applied Tennessee's version of the UAA⁴³⁰ in determining that the plaintiff's suit to vacate the award was timely filed.⁴³¹ The court followed the general borrowing rule of using the forum state's limitations period, and distinguished *DelCostello* on much the same basis as the *Domas* court had done.⁴³² In order to better serve federal policies and diminish confusion, the *Champion* court held that federal choice of law demands that the forum state's most analogous limitations period control.⁴³³ Only if a party can show an undermining of federal policy or undue hardship, may a federal statute of limitations apply.⁴³⁴

IX. JUDGMENTS ON AWARDS

A. Judgment on Award Entered by Court

Once the court grants an order confirming, modifying or correcting an award, the UAA provides that "judgment shall be entered in conformity therewith."⁴³⁵ In *Wessell Brothers v. Crossett Public School District*,⁴³⁶ the

426. *Domas*, 778 F.2d at 1269.

427. *Id.* at 1270.

428. *Champion Int'l Corp. v. United Paperworkers Int'l Union*, 779 F.2d 328 (6th Cir. 1985).

429. *Id.*

430. TENN. CODE ANN. § 29-5-213(b) (1980) (superceded by § 29-5-313 (Supp.1985)).

431. *Champion*, 779 F.2d at 331-32.

432. *Id.*

433. *Id.* at 334.

434. *Id.*

435. UAA § 14.

436. 287 Ark. 415, 701 S.W.2d 99 (1985).

Arkansas Supreme Court reversed a circuit court judgment which did not conform to the arbitrator's award.⁴³⁷ A school district, architect, contractor, and subcontractor entered into arbitration when disputes arose over structural defects in a school building. The arbitrator entered an award in favor of the school district, giving a detailed division of payment to be made by each defendant. The award provided that the defendants were severally liable.⁴³⁸ The circuit court, however, entered a judgment providing for joint and several liability.⁴³⁹ The supreme court reversed, relying on the Arkansas Arbitration Act.⁴⁴⁰ Absent a showing of grounds to support vacating or modifying an arbitrator's award, the court is to confirm an award and enter a judgment in conformity with the award.⁴⁴¹ The supreme court held that it was error for the circuit court to enter a judgment calling for joint and several liability when the arbitrator's award called for several liability only.⁴⁴²

When an arbitration award is contingent on the occurrence of an event and such occurrence is neither alleged nor proven, dismissal of a complaint for judgment on the award is proper.⁴⁴³ In *Russell H. Lankton Const. Co. v. LaHood*,⁴⁴⁴ Lankton contracted to supply and install air conditioning and heating units in LaHood's buildings. A dispute arose regarding payment for and completion of work, and the dispute was submitted to arbitration as provided by contract. An arbitration award was issued which provided that Lankton was entitled to be paid by LaHood within 15 days after the issuance of a Final Certificate of Payment by the architect.⁴⁴⁵ The trial court dismissed Lankton's subsequent "Complaint for Judgment on Award."⁴⁴⁶ The appellate court determined that Lankton's pleading failed to allege or prove the issuance of the Certificate of Payment, as required by the arbitration award.⁴⁴⁷ The court noted that other Illinois courts facing similar nonarbitration situations had applied a common law breach of contract theory, requiring that the party seeking compensation plead and prove the issuance of the architect's certificate.⁴⁴⁸ The court then reasoned that because the awarded payment was contingent upon the certificate and because Lankton could neither plead nor prove its issuance, dismissal was proper.⁴⁴⁹

437. *Id.* at 422, 701 S.W.2d at 103.

438. *Id.* at 419, 701 S.W.2d at 101.

439. *Id.* at 417, 701 S.W.2d at 100.

440. ARK. STAT. ANN. §§ 34-522, 523 (1985) are identical to UAA §§ 12, 13.

441. *Wessell Bros. Found. Drilling Co. v. Crossett Public School Dist.*, 287 Ark. 415, 420, 701 S.W.2d 99, 102 (1985).

442. *Id.* at 419, 701 S.W.2d at 102.

443. *Russell H. Lankton Construction Co. v. LaHood*, 143 Ill. App. 3d 806, 493 N.E.2d 714 (1986).

444. *Id.*

445. *Id.* at 807, 493 N.E.2d at 715.

446. *Id.*

447. *Id.* at 808, 493 N.E.2d at 716.

448. *Id.*

449. *Id.* Although procedural inadequacies barred Lankton's action, it is im-

B. *Prejudgment Interest*

Generally, a court will not add prejudgment interest to an arbitration award. In *Creative Builders, Inc. v. Avenue Developments, Inc.*,⁴⁵⁰ both parties sought confirmation of an arbitration award in the trial court. Neither sought prejudgment interest. The trial court, however, held *sua sponte* that the arbitrators erred in not awarding prejudgment interest because in Arizona, "an award of prejudgment interest is allowed as a matter of right on a liquidated claim."⁴⁵¹ The appellate court ruled that any claim that a party had for prejudgment interest was presumed to be included in the arbitration award.⁴⁵² Therefore, the court had no authority to modify the award by adding prejudgment interest.⁴⁵³

In *Hedlund v. Citizens Sec. Mut. Ins. Co.*,⁴⁵⁴ Hedlund sought an order confirming an arbitration award and an order of judgment on the award to include prejudgment interest.⁴⁵⁵ The district court refused to award the prejudgment interest.⁴⁵⁶ The appellate court affirmed the denial of prejudgment interest, holding that the arbitration statute does not permit the trial court to award prejudgment interest upon a motion for confirmation of an award when interest was not awarded by the arbitrators.⁴⁵⁷

Prejudgment interest was also denied in *Wanschura v. Western National Mutual Insurance Co.*⁴⁵⁸ The father of a child killed in a traffic accident obtained an arbitration award based upon an uninsured motorist claim. The claimant moved to confirm the award and requested prejudgment interest. The court held that it would not modify the award by adding prejudgment interest. The court justified its decision by the presumption favoring the finality of arbitration awards. The court stated that the presumption is necessary in order to promote arbitration as a speedy and relatively inexpensive method of dispute resolution.⁴⁵⁹

X. APPEALS

The UAA provides for the appeal of an order: (1) denying an application to compel arbitration; (2) granting an application to stay arbitration; and (3)

portant that the court made no observation regarding Lankton's possible attempt to compel further arbitration pursuant to the Illinois Arbitration Act. The court's holding expressed no intent "to bar collection of the amount ultimately found due under the award." *Id.*

450. 148 Ariz. 452, 715 P.2d 308 (1986).

451. *Id.* at ____, 715 P.2d at 313.

452. *Id.*

453. *Id.*

454. 377 N.W.2d 460 (Minn. Ct. App. 1985).

455. *Id.*

456. *Id.*

457. *Id.* at 464.

458. 389 N.W.2d 927 (Minn. Ct. App. 1986).

459. *Id.* at 928.

confirming, denying to confirm, modifying, correcting or vacating an award.⁴⁶⁰ Judgments or decrees entered pursuant to the provisions of the UAA may also be appealed.⁴⁶¹ Although the UAA does not expressly provide for the appeal of an order *granting* an application to compel arbitration, courts have allowed appeals of such orders.⁴⁶² An order granting a motion to stay judicial proceedings has been held non-appealable as a final order or an interlocutory order.⁴⁶³

A. Orders Compelling Arbitration

An order compelling arbitration was held to be appealable in *Evansville-Vanderburgh School Corp. v. Evansville Teachers Association*.⁴⁶⁴ When a dispute arose as to whether a Side Letter Agreement was part of the collective bargaining agreement between the teachers and the school district, the teachers' association filed a complaint requesting an order to compel arbitration. The circuit court issued the order and the school district appealed.⁴⁶⁵ Addressing the issue of whether the order was appealable,⁴⁶⁶ the Indiana Court of Appeals stated that "the order compelling arbitration is appealable in this case, either as a final judgement as to that issue, [because there was no longer a justiciable issue before the court] or as a permitted interlocutory appeal."⁴⁶⁷ The court also cited a policy consideration for its decision, stating that "withholding the right to appeal and compelling the parties to go through useless arbitration proceedings is counter-productive."⁴⁶⁸

B. Orders Staying Judicial Proceedings

An order granting a motion to stay judicial proceedings pending arbitration is not appealable as a final order or as an interlocutory order granting

460. UAA § 19.

461. UAA § 19 provides:

(a) An appeal may be taken from: (1) An order denying an application to compel arbitration made under Section 2; (2) An order granting an application to stay arbitration made under Section 2(b); (3) An order confirming or denying confirmation of an award; (4) An order modifying or correcting an award; (5) An order vacating an award without directing a rehearing; or (6) A judgment or decree entered pursuant to the provisions of this act.

(b) The appeal shall be taken in the manner and to the same extent as from orders or judgments in a civil action.

462. See, e.g., *Board of Educ. v. Indian Prairie Educ. Ass'n*, 13 Ill. App. 3d 1040, 487 N.E.2d 1149 (1985).

463. *U.S. Insulation Inc. v. Hilro Construction*, 146 Ariz. 250, 705 P.2d 490 (1985).

464. ____ Ind. App. ____, 494 N.E.2d 321 (1986).

465. *Id.*

466. *Id.* at 325. The appeals provision of the Indiana UAA is identical to UAA § 19. Compare UAA § 19 with IND. CODE ANN. § 34-4-2-19 (Burns Supp. 1986).

467. *Id.* (citing IND. RULES APP. PROC., Rule 4(B)(6)).

468. *Id.*

an injunction.⁴⁶⁹ In *Pioneer Properties, Inc. v. Martin*,⁴⁷⁰ the plaintiff brought an action against a fellow joint venturer in the district court alleging violations of federal and state securities laws in the district court. The district court granted the defendant's motion to stay the proceedings pending arbitration. The Tenth Circuit was faced with the issue of whether an order granting a motion to stay judicial proceedings is appealable as a final order under 28 U.S.C. § 1292 which allows appeal from a final order, or as an interlocutory order granting an injunction under 28 U.S.C. § 1292, which allows appeal from an interlocutory order granting an injunction. The court held that the motion to stay was not final under Section 1291 because it did not have the effect of terminating all federal litigation on the merits.⁴⁷¹ In determining the appealability of the matter under Section 1292(a)(1), the court noted that an order staying proceedings in federal district court is appealable if: (1) the action in which the order was made is an action which by its nature would be an action at law before the fusion of law and equity; and (2) the stay was sought to permit the determination of an equitable defense or counterclaim.⁴⁷² The court stated that the granting of the motion to stay fulfilled the second prong.⁴⁷³ However, the court held that first prong was not met because plaintiff's securities claims seeking rescission and damages would not qualify as a purely legal action before the fusion of the law and equity.⁴⁷⁴ Therefore, the court disallowed an appeal from the motion to stay judicial proceedings.⁴⁷⁵

C. Orders Denying the Compulsion of Arbitration

Although the UAA specifically provides that an order denying the compulsion of arbitration is appealable,⁴⁷⁶ on occasion a party argues that an appeal should not be allowed. For example, in *U.S. Insulation, Inc. v. Hilro Const. Co.*,⁴⁷⁷ plaintiff filed suit for damages caused by defendant's repudiation of a contract. Defendant filed a motion to compel arbitration and to stay court proceedings. The trial court denied defendant's motion to compel arbitration and defendant appealed. On appeal, plaintiff argued that the trial court's order was interlocutory in nature, and as such, was not appealable until final judgment was rendered.⁴⁷⁸ The appellate court, however,

469. *Pioneer Properties, Inc. v. Martin*, 776 F.2d 888 (10th Cir. 1985).

470. *Id.*

471. *Id.* at 890.

472. *Id.* at 891.

473. *Id.* at 892.

474. *Id.*

475. *Id.*

476. UAA § 19.

477. 146 Ariz. 250, 705 P.2d 490 (1985).

478. *Id.*

held that the denial of a motion to compel arbitration is substantively appealable.⁴⁷⁹

XI. JUDICIAL PROCEEDINGS

Although arbitration is a non-judicial proceeding, the UAA does authorize limited judicial involvement. Generally, the UAA empowers courts to determine whether a valid arbitration agreement exists⁴⁸⁰ and enforce⁴⁸¹ the agreement by compelling arbitration or, when appropriate, by staying arbitration or judicial proceedings.⁴⁸²

Once an arbitration award is rendered, the court may confirm,⁴⁸³ correct, modify⁴⁸⁴ or vacate⁴⁸⁵ the award. Upon the granting of an order confirming, correcting or modifying an award, the court must enter a judgment in conformity therewith.⁴⁸⁶ Jurisdiction lies with the courts of competent jurisdiction in the state.⁴⁸⁷ In proceedings to confirm, modify or vacate awards, courts must rule upon a variety of issues which may be raised by the parties. Although courts generally rule on the arbitrability of a claim, the responsibility may be shifted to a state administrative agency or board.⁴⁸⁸ The issue of waiver of the right to compel arbitration is to be determined by a court, not an arbitrator.⁴⁸⁹ The res judicata effect of a prior arbitration award is also to be determined by a court.⁴⁹⁰ In Pennsylvania, a court may rule upon constitutional attacks on an arbitrator's award.⁴⁹¹ A court may also have the power, under a state's arbitration act, to review an arbitration award rendered pursuant to a state law which prohibits review.⁴⁹²

479. *Id.* (quoting ARIZ. REV. STAT. ANN. § 12-2101.01(A)(1) (1982); *Rancho Pescado, Inc. v. Northwestern Mut. Life Ins. Co.*, 140 Ariz. 174, 183, 680 P.2d 1235, 1244 (1984)).

480. UAA § 2(a).

481. UAA § 17.

482. UAA § 2.

483. UAA § 11.

484. UAA § 13.

485. UAA § 12.

486. UAA § 14.

487. UAA § 17.

488. *Board of Education for Dorchester County v. Hubbard*, 305 Md. 774, 506 A.2d 625 (1986).

489. *Joba Construction Co. v. Monroe County Drain Comm'r*, 150 Mich. App. 173, 388 N.W.2d 251 (1986).

490. *Monmouth Public Schools, Dist. No. 38 v. Pullen*, 141 Ill. App. 3d 60, 489 N.E.2d 1100 (1985).

491. *Pa. Social Services Union v. Commonwealth of Pa. Bd. of Probation & Parole*, 93 Pa. Commw. 272, 508 A.2d 360 (1986).

492. *Appeal of Upper Providence Police Lodge*, ____ Pa. Commw. ____, 502 A.2d 263 (1985).

Typically courts are responsible for ruling on the arbitrability of individual claims made under a valid arbitration agreement.⁴⁹³ However, in limited instances, this responsibility may be shifted to a state administrative agency or board.⁴⁹⁴ In *Board of Education for Dorchester Co. v. Hubbard*,⁴⁹⁵ the appellate court ruled that the State Board of Education, rather than the circuit court, had primary jurisdiction in determining the arbitrability of claims concerning teaching certificate classification and class size.⁴⁹⁶ In *Hubbard*, one dispute arose when a group of Dorchester County teachers objected to reductions in their teaching certificate classifications. Another dispute arose when a group of teachers in Garrett county filed a grievance because of their School Board's failure to hire enough teachers to accommodate class size. In each case, the teachers tried to submit their disputes to arbitration. The Dorchester County School Board sought to stay arbitration on the ground that the certification issue was not arbitrable. The Garrett County Board sought to vacate an arbitration award on similar grounds. Both circuit courts held that the issues were arbitrable, ruling in favor of the teachers.⁴⁹⁷ On appeal, the cases were consolidated, and the appellate court raised *sua sponte* the issue of whether the courts should defer to the State Board of Education.⁴⁹⁸ Despite holding that the circuit courts in Maryland were authorized to entertain the actions,⁴⁹⁹ the court ultimately found that the State Board of Education had primary jurisdiction.⁵⁰⁰ The court justified judicial deference to the State Board of Education by recognizing that the Board's "paramount role . . . in interpreting the public education laws sets it apart from most administrative agencies."⁵⁰¹

The issue of waiver is to be determined by the court, not the arbitrator. In *Joba Construction Co. v. Monroe County Drain Commissioner*,⁵⁰² Monroe County issued a stop work order against Joba and Joba filed a demand to arbitrate. Subsequent to the demand, Joba filed for a writ of mandamus in Monroe County Circuit Court alleging that the County Commissioner had tortiously interfered with the contract. The Commissioner moved to prohibit arbitration on the ground that by filing suit Joba had waived its right to

493. *Recent Developments* 1985, *supra* note 3, at 190; *Recent Developments* 1984, *supra* note 3, at 229.

494. *Board of Educ. for Dorchester Co. v. Hubbard*, 305 Md. 774, 506 A.2d 625 (1986).

495. *Id.*

496. *Id.* at 792, 506 A.2d at 634.

497. *Id.* at 782-85, 506 A.2d at 629-30.

498. *Id.* at 787, 506 A.2d at 631.

499. *Id.*

500. *Id.*

501. *Id.* at 791, 506 A.2d at 633. It is significant to note that although the court vested primary jurisdiction in the Board, a body independent from the arbitration proceeding was given the power to determine arbitrability.

502. 150 Mich. App. 173, 388 N.W.2d 251 (1986).

arbitration.⁵⁰³ The circuit court granted the Commissioner's motion. The decision, however, was vacated on appeal on the basis that the circuit court did not have jurisdiction over the waiver issue as waiver could be determined only by the arbitrator.⁵⁰⁴ Monroe County appealed to the Michigan Supreme Court which remanded to the appellate court. The court of appeals was instructed to again determine whether the circuit court or the arbitrator was the proper forum to decide if a party has waived the right to arbitrate.⁵⁰⁵ Without discussing its rationale or citing any authority for its decision, the appellate court concluded that the circuit court should decide the waiver question.⁵⁰⁶ The circuit court then held that Joba's filing of the tort claim did constitute a waiver of the right to arbitrate.⁵⁰⁷

The res judicata effect of a prior arbitration award is also to be decided by the court.⁵⁰⁸ In *Monmouth Public Schools v. Pullen*,⁵⁰⁹ Pullen was on maternity leave for the first semester of the 1981-1982 school year and was subsequently denied credit for a full year's work on the 1982-1983 teachers' salary schedule. Pullen's initial grievance was ruled nonarbitrable because it had not been filed in a timely manner as specified by the collective bargaining agreement between the District and the teachers.⁵¹⁰ She then filed another grievance requesting the salary schedule credit for the same 1981-82 time period. The second grievance included a new request that "all other teachers affected in like manner be properly placed on the salary schedule."⁵¹¹ Despite this additional request, the second grievance still arose from Pullen's failure to advance on the salary schedule because of her maternity leave. The trial judge found this second claim barred by res judicata.⁵¹² The appellate court also ruled in favor of the School District, holding that under the Illinois Arbitration Act provision authorizing stays of arbitration, the court could properly decide whether a prior arbitration award removed a specific issue from the scope of

503. *Id.* at 176, 388 N.W.2d at 253.

504. *Id.*

505. *Id.*

506. *Id.*

507. *Id.* at 179, 388 N.W.2d at 254. The court reached this conclusion despite Construction Industry Arbitration Rule 47 which stated that no judicial proceeding relating to the subject matter shall be deemed a waiver of the party's right to arbitrate. The Michigan Court of Appeals affirmed, reasoning that if Rule 47 meant no court proceeding could ever constitute a waiver, it would be adverse to MCL § 600.5035 which states that arbitration does not effect the equitable power of the court over arbitrators, awards, etc. The court of appeals also relied on judicial economy to prohibit arbitration because claims relevant to the arbitration would also have to be heard in the circuit court resulting in duplication of evidence.

508. *Monmouth Public Schools, Dist. No. 38 v. Pullen*, 141 Ill. App. 3d 60, 489 N.E.2d 1100 (1985).

509. *Id.*

510. *Id.* at 62, 489 N.E.2d at 1101.

511. *Id.* at 62, 489 N.E.2d at 1101-02.

512. *Id.* at 63, 489 N.E.2d at 1102.

arbitration.⁵¹³ Under the same provision, the court ruled that "the defense of res judicata may be timely raised by a motion to stay arbitration," and that the effect given a prior award is a matter to be determined by the court.⁵¹⁴

Pennsylvania courts can exercise review of an arbitration decision to remedy any alleged constitutional violations.⁵¹⁵ In *Pennsylvania Social Services Union v. Commonwealth Pennsylvania Board of Probation and Parole*,⁵¹⁶ William Pryor was dismissed from his job as a human services aide after being caught in possession of drugs. Pryor's dismissal was submitted to arbitration pursuant to a collective bargaining agreement between the Union and the Board of Probation.⁵¹⁷ The arbitrator upheld Pryor's dismissal and the Union appealed. The first issue the commonwealth court addressed was whether it could review the arbitrator's decision. The court held that since Section 903 of the Pennsylvania Employee Relations Act compelled state collective bargaining employees to arbitrate, the court could exercise its right of review under the Pennsylvania Arbitration Act.⁵¹⁸ The Union alleged that Pryor's right to be free from unreasonable search and seizure and his right to due process were violated. Regarding the unreasonable search claim, the court held that exclusionary rule evidence is not applicable in arbitration proceedings, and thus, there was no violation of Pryor's Fourth Amendment rights.⁵¹⁹ As to the due process claim, the court found that no violation of due process occurred since Pryor received pre-termination notice and was well represented by union counsel at the arbitration hearing.⁵²⁰

Courts may also have the authority under a state's arbitration act to review an arbitrator's decision reached pursuant to a state law which prohibits review.⁵²¹ In *Appeal of Upper Providence Police Lodge*,⁵²² a dispute arose concerning Act 111, which gave policemen and firemen the right to collectively bargain. The dispute was submitted to arbitration and the Board of Arbitrators held that policemen's hospital and medical benefits would be discontinued after one year. The Union appealed the award.⁵²³ In response, the township of Upper Providence argued that arbitration decisions under

513. *Id.* at 64-65, 489 N.E.2d at 1103.

514. *Id.* at 69-70, 489 N.E.2d at 1105.

515. *Pa. Social Services Union v. Commonwealth Pa. Bd. of Probation & Parole*, 93 Pa. Commw. 272, 508 A.2d 360 (1986).

516. *Id.*

517. *Id.* at ____, 508 A.2d at 362.

518. *Id.* at ____, 508 A.2d at 363.

519. *Id.* at ____, 508 A.2d at 364.

520. *Id.* at ____, 508 A.2d at 364-365.

521. *Appeal of Upper Providence Police Lodge*, __ Pa. Commw. ____, 502 A.2d 263 (1985).

522. *Id.*

523. *Id.*

Act 111⁵²⁴ were not appealable.⁵²⁵ Although Act 111 specifically stated that awards rendered by the Board of Arbitrators were not appealable, the court held that the Pennsylvania Arbitration Act⁵²⁶ permitted courts to review arbitration awards where "a political subdivision submits a controversy with an employee or a representative of employees to arbitration."⁵²⁷ The township contended that an official source note⁵²⁸ to the Arbitration Act demonstrated that the general assembly did not intend to disturb narrow certiorari as the scope of judicial review under Act 111.⁵²⁹ However, the commonwealth court noted that the case referred to in the official source note referred to the scope of review for an act other than Act 111.⁵³⁰ The court further noted that in the event the official source note did refer to the scope of review for Act 111,⁵³¹ the text of a statute controls where there is a conflict between the text and a comment.⁵³² Thus, if the note meant to say that narrow certiorari remains the scope of review for awards of arbitrators, it is inconsistent with the text of the Arbitration Act and must be disregarded.⁵³³ Therefore, the court did have the power to review the award.⁵³⁴

524. 43 PA. CONS. STAT. §§ 217.1-217.10 (Purdon 1968).

525. *Upper Providence*, ____ Pa. Commw. ____, 502 A.2d at 264. Section 7(a) of the Act, which was in dispute, stated that no appeal therefrom of the determination of the majority of the Board of Arbitrators shall be allowed to any court. The Pennsylvania Supreme Court had previously interpreted this section to mean that all board awards were final and that common pleas courts had no jurisdiction on appeal. The only exception was that the Pennsylvania Supreme Court would entertain appeals on narrow certiorari, granting review only of jurisdiction, regularity of proceedings, questions of abuse of powers, and constitutional questions.

526. *Id.* at ____, 502 A.2d at 265. The statute the court relied on postdated both Act 111 and the Washington Arbitration Case, 436 Pa. 168, 259 A.2d 437 (1969).

527. *Upper Providence*, ____ Pa. Commw. ____, 502 A.2d at 265.

528. An official source note is one attached to a bill introduced in the state general assembly generally explaining the purpose or reasoning behind the legislation.

529. *Id.* The source note stated that subsection (d) was intended to preserve without change the scope of review which presently exists over awards of arbitrators.

530. *Id.* at ____, 502 A.2d at 266.

531. 1 PA. CONS. STAT. § 1939 (Purdon Supp. 1986).

532. *Upper Providence*, ____ Pa. Commw. ____, 502 A.2d at 266.

533. *Id.* The dissent pointed out that Act 111 specifically avoids using the courts for dispute resolution. The only method for settling grievance disputes is arbitration. Thus, the object of Act 111 would be completely frustrated by permitting court intervention. The dissent also noted that when the trial court first addressed the issue, it held that arbitrations under Act 111 were not appealable and refused to hear the case. The dissent interpreted the official source note to Section 7302 to indicate an intent to preserve without change the scope of review which presently exists over awards of arbitrators such as those appointed under Act 111. The dissent asserted that the majority had reversed itself, in contravention of the Pennsylvania Supreme Court's view, to prevent increasing judicial review of arbitration awards.

534. *Id.* at ____, 502 A.2d at 265.

XII. JUDICIAL REVIEW

When parties contract to arbitrate a dispute and an award is rendered, courts will apply a very narrow standard of review in order to encourage the enforcement and strengthen the finality of arbitration awards.⁵³⁵ When there is no dispute as to the existence of the arbitration agreement, a court will uphold an arbitrator's award unless it is completely irrational.⁵³⁶ When there is a dispute as to the existence of the agreement, a court may undertake a *de novo* review.⁵³⁷ A court will uphold an arbitrator's interpretation of a collective bargaining agreement if the interpretation can be derived from the agreement in any rational way.⁵³⁸ An arbitrator's interpretation of contractual requirements should be considered final unless the contract itself is contrary to public policy.⁵³⁹ An award must clearly exceed the scope of the issues presented for arbitration before it will be modified.⁵⁴⁰ A court should interfere with an arbitrator's decision to exclude evidence only when the exclusion has led to a complete omission of critical evidence.⁵⁴¹

When there is no dispute as to the existence of an arbitration agreement, a court will uphold an arbitrator's award unless it is completely irrational.⁵⁴² When the existence of the agreement is in dispute, however, the court will undertake a *de novo* review.⁵⁴³ In *Barclay Townhouse Associates v. Messersmith*,⁵⁴⁴ a dispute arose between a subcontractor and a general contractor regarding the scope and quality of the construction work being performed. When the subcontractor demanded arbitration, the general contractor and the developer claimed that no written agreement to arbitrate existed. The subcontractor, however, received an arbitration award in his favor. The circuit court affirmed the award, finding nothing to render its issuance "completely irrational" and consequently finding no grounds to vacate.⁵⁴⁵ On

535. *Barclay Townhouse Ass'n v. Messersmith*, 67 Md. App. 493, 508 A.2d 507 (1986).

536. *Id.*

537. *Id.* at 497-98, 508 A.2d at 509-10.

538. *Upper Bucks County Vocational-Technical School Joint Comm. v. Upper Bucks Vocational Technical School Educ. Ass'n*, 91 Pa. Commw. 413, ___, 497 A.2d at 943, 946 (1985).

539. *Amalgamated Transit Union Div. 1300 v. Mass Transit Admin.*, 305 Md. 380, 504 A.2d 1132 (1986).

540. *Champion Int'l Corp. v. United Paperworkers Int'l Union*, 779 F.2d 328, 335 (6th Cir. 1985).

541. *City of Fairbanks Mun. Util. Sys. v. Lees*, 705 P.2d 457, 461 (Alaska 1986).

542. *Barclay Townhouse Ass'n v. Messersmith*, 67 Md. App. 493, 508 A.2d 507 (1986).

543. *Id.*

544. *Id.*

545. *Id.* at 495-96, 508 A.2d at 508.

appeal, the court ruled that the "completely irrational" standard was appropriate where the existence of the arbitration agreement was a matter of mutual agreement, and neither party challenged jurisdiction.⁵⁴⁶ However, when "the basic jurisdiction of the arbitration is challenged," the court found the "completely irrational" standard totally inappropriate.⁵⁴⁷ The appellate court noted that when parties contract to arbitrate a dispute and an award is rendered, the court applies a very narrow standard of review to encourage enforcement of arbitration awards.⁵⁴⁸ The appellate court held that "where the basic jurisdiction of the arbitration is challenged, the court must undertake a *de novo* review to determine if such an agreement exists."⁵⁴⁹ The case was remanded to the circuit court to determine the existence of the agreement.⁵⁵⁰

A court will uphold an arbitrator's interpretation of a collective bargaining agreement if that interpretation can in any rational way be derived from the agreement.⁵⁵¹ In *Upper Bucks County Area Vocational-Technical School Joint Committee v. Upper Bucks County Vocational Technical School Ass'n*,⁵⁵² a dispute arose over the issue of whether teachers should receive back pay for days missed because of a strike. The teachers claimed that according to their contract, the days missed must be made up. The Upper Bucks County Education Association (U.P.C.E.A.), however, decided the days were not to be made up. The dispute was brought before an arbitrator, pursuant to a collective bargaining agreement, who ruled that the teachers should receive eight days of back pay. The U.P.C.E.A. moved for vacation or modification of the award in the trial court, claiming that the award was against public policy of the commonwealth. The court noted that the scope of its review of an arbitrator's award was defined by the "essence" test.⁵⁵³ The "essence" test, established by the Pennsylvania Supreme Court, states "[if the] award is based on a resolution of a question of fact [it] is to be respected by the judiciary if 'the interpretation can in any rational way be derived from the [collective bargaining] agreement, viewed in light of its language, its context, and any other indicia of the parties' intention'."⁵⁵⁴ The court added, however, that if an arbitrator's award against the commonwealth conflicts with a fundamental policy of the commonwealth as expressed

546. *Id.* at 498, 508 A.2d at 510.

547. *Id.*

548. *Id.* at 496, 508 A.2d at 509.

549. *Id.* at 498, 508 A.2d at 510.

550. *Id.*

551. *Upper Bucks County Area Vocational-Technical School Joint Comm. v. Upper Bucks County Vocational Technical School Ass'n*, 91 Pa. Commw. 463, —, 497 A.2d 943, 945 (1985).

552. *Id.*

553. *Id.*

554. *Id.* at —, 497 A.2d at 946.

in statutory law, then the judiciary has express statutory authority to correct or modify the award.⁵⁵⁵ The court concluded that the arbitrator's award did not conflict with any statutory law, the "essence" test was satisfied, and therefore, the court upheld the arbitrator's award.⁵⁵⁶

An arbitrator's decision concerning the interpretation of contractual requirements, although nearly always final, may be overturned if the contract itself is contrary to public policy.⁵⁵⁷ *Amalgamated Transit Union Division 1300 v. Mass Transit Administration*,⁵⁵⁸ involved a dispute over the contractual requirements that had to be fulfilled before the Mass Transit Administration [hereinafter MTA] could discharge a union driver. Pursuant to the parties' collective bargaining agreement, the controversy was submitted to arbitration. The arbitrator found that the driver who had been discharged for misconduct, operated a bus with the odor of alcohol on his breath without being under the influence. The arbitrator ruled this did not constitute just cause for discharge, and ordered reinstatement of the driver.⁵⁵⁹ After MTA's refusal to reinstate the driver, the union sought specific performance of the arbitration award, but the trial court denied the union's request.⁵⁶⁰ The court of appeals stated:

Having bargained for the decision of the arbitrator on the question of whether [the driver's conduct] constituted 'just cause' for discharge, the parties are bound by it. . . . [S]o far as the arbitrator's decision concerns construction of the contract, the courts have no business overruling [the arbitrator] because their interpretation of the contract is different from his.⁵⁶¹

The court, however, noted a public policy exception to the finality of the arbitrator's contract interpretation, stating: "As with any contract, 'a court may not enforce a collective bargaining agreement that is contrary to public policy'."⁵⁶² The appellate court held, therefore, that "for MTA to prevail it must demonstrate that Maryland public policy compels the discharge of a public bus operator for having the odor of alcohol on his breath, although the operator was not under the influence. . . ."⁵⁶³ The court concluded that Maryland's public policy did not compel the discharge. Therefore, the court ruled that judicial intrusion was not permitted into a dispute which, according to the parties' labor contract, is to be resolved exclusively by the arbitrator chosen by them.⁵⁶⁴

555. *Id.*

556. *Id.*

557. *Amalgamated Transit Union Div. 1300 v. Mass Transit Admin.*, 305 Md. 380, ___, 504 A.2d 1132, 1136 (1986).

558. *Id.*

559. *Id.* at 385, 504 A.2d at 1134.

560. *Id.* at 387, 504 A.2d at 1135.

561. *Id.* at 388, 504 A.2d at 1136.

562. *Id.*

563. *Id.* at 390, 504 A.2d at 1137.

564. *Id.* at 381-82, 504 A.2d at 1132-33.

An arbitrator's award must *clearly* exceed the scope of the issues submitted before a court will modify the award.⁵⁶⁵ In *Champion International Corp. v. United Paperworkers International Union*,⁵⁶⁶ a union had prepared two grievances for arbitration, but withdrew one of the issues before arbitration. Despite the withdrawal, the arbitrator issued an award based on both grievances. The district court modified the award because it exceeded the scope of the submitted issues.⁵⁶⁷ On appeal, the Sixth Circuit acknowledged that there is a presumption that an arbitrator's award is within the scope of the submitted issues.⁵⁶⁸ The presumption is overcome, however, where "an arbitrator has *clearly* exceeded the scope of the submission. . . ."⁵⁶⁹ The court concluded that the arbitrator clearly exceeded the submitted issues by basing the award on an issue that had been withdrawn.⁵⁷⁰ As a result, the appellate court affirmed the district court's modification of the arbitration award.⁵⁷¹

A court should interfere with an arbitrator's decision to exclude evidence only when the exclusion has led to a complete omission of critical evidence.⁵⁷² In *City of Fairbanks Municipal Utilities System v. Lees*,⁵⁷³ Lees was fired by the city for failing to properly perform his maintenance duties. The dispute was submitted to arbitration whereupon the arbitrator determined that Lees' firing was justified. Lees sought judicial review of the decision, claiming that the arbitrator's decision was invalid because the arbitrator excluded one of Lees' witnesses, thereby depriving him of his right to a fair hearing. After a trial *de novo*, the superior court partially vacated the arbitration award claiming the arbitrator had improperly excluded the evidence. On appeal, the Alaska Supreme Court reversed the superior court's finding and affirmed the arbitrator's decision.⁵⁷⁴ The supreme court reasoned that it is not the court's function to hear the case *de novo* and to consider the evidence presented to the arbitrator.⁵⁷⁵ An arbitrator has great flexibility concerning questions of admissibility of evidence, and courts should interfere with an arbitration award only when the arbitrator's exclusion of evidence has led to a complete omission of critical evidence.⁵⁷⁶

565. *Champion Int'l Corp. v. United Paperworks Int'l Union*, 779 F.2d 328, 335 (6th Cir. 1986).

566. *Id.*

567. *Id.* at 329-30.

568. *Id.* at 335.

569. *Id.* (emphasis added).

570. *Id.*

571. *Id.*

572. *City of Fairbanks Mun. Util. Sys. v. Lees*, 705 P.2d 457 (Alaska 1986).

573. *Id.*

574. *Id.* at 459.

575. *Id.* at 461.

576. *Id.*

XIII. PREEMPTION

In *Southland Corp. v. Keating*,⁵⁷⁷ the United States Supreme Court held that state arbitration law is, in part, preempted by the Federal Arbitration Act [hereinafter FAA].⁵⁷⁸ The FAA will preempt where there is a written arbitration agreement evidencing a maritime transaction or a transaction involving interstate⁵⁷⁹ or international commerce.⁵⁸⁰ Courts have read the phrase "interstate commerce" as encompassing agreements that touch upon⁵⁸¹ or have a slight nexus with commerce between states.⁵⁸² When the FAA is held to be applicable, it will control, regardless of the choice of law provision in the arbitration agreement.⁵⁸³ State contracts law, however, may be utilized to interpret a contract issue arising under an agreement governed by the FAA.⁵⁸⁴

In *Ex Parte Costa and Head (Atrium) Ltd.*,⁵⁸⁵ the court held that where parties to the arbitration of a major construction contract were from several states, the transaction involved interstate commerce and thus was controlled by the FAA. Costa and Head, owners and architects of the project under construction became dissatisfied with the performance of Duncan, its general contractor, during the course of construction. Costa and Head brought suit in circuit court after Duncan refused to permit access to certain project records, and Duncan met this complaint with a suit of its own for breach of the construction contract. Costa and Head then added suits for fraud and breach of contract, and included a claim that arbitration should be compelled pursuant to the arbitration clause in the contract and trial stayed pending arbitration.⁵⁸⁶ On appeal of the denial of the motion to compel arbitration, Costa and Head contended that the FAA applied. Duncan argued that the

577. 465 U.S. 1 (1984).

578. *Id.* at 10-11; See generally 9 U.S.C. §§ 1-14 (1982).

579. 9 U.S.C. § 2 (1982) provides:

A written provision in any maritime transaction or a contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract or transaction, or the refusal to perform the whole or any part thereof, or an agreement in writing to submit to arbitration an existing controversy arising out of such a contract, transaction or refusal, shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract.

580. *Dolomite S.P.A. v. Beconta, Inc.*, 129 Misc. 2d 857, 858-59, 493 N.Y.S.2d 705, 707 (1985).

581. *Ainsworth v. Allstate Ins. Co.*, 634 F. Supp. 52, 55-56 (W.D. Mo. 1985).

582. *Ex Parte Costa and Head (Atrium) Ltd.*, 486 So. 2d 1272, 1275 (Ala. 1986).

583. *Ainsworth*, 634 F. Supp. at 54.

584. *Hope v. Dean Witter Reynolds, Inc.*, 181 Cal. App. 3d 446, 226 Cal. Rptr. 439 (1986).

585. 486 So. 2d 1272.

586. *Id.* at 1273.

contract did not evidence a transaction involving interstate commerce, and therefore did not meet the established criterion for application of the FAA.⁵⁸⁷ The court rejected Duncan's claim, looking to the multi-state residences of the parties, and the fact that subcontractors and materials were brought to Alabama from out of state.⁵⁸⁸ Noting that the interstate commerce requirement of the FAA was to be very broadly construed, the court held that the "slightest nexus" between the transaction and interstate commerce would bring the agreement within the ambit of the federal statute.⁵⁸⁹

In *Dolomite S.P.A. v. Beconta, Inc.*,⁵⁹⁰ the court held that the arbitration clause in an agreement concerning international business must be enforced pursuant to the FAA rather than state law. In *Dolomite*, the parties entered into an arbitration agreement when Dolomite, an Italian ski boot manufacturer, discovered that its American joint venture partner, Beconta, had stolen money from Dolomite. Dolomite then brought suit to rescind the agreement, claiming fraudulent inducement.⁵⁹¹ The court held that the FAA preempted state arbitration law.⁵⁹² The issue of fraudulent inducement would not have been arbitrable under state law. Under the body of federal substantive law created by the FAA, however, it was deemed arbitrable.⁵⁹³ Dolomite also argued for a stay of arbitration under a specific provision of the New York Arbitration law⁵⁹⁴ which was in conflict with the FAA. The court found the state procedural rule inapplicable on the basis that the outcome would be contrary to that which would be reached in a federal court. The court stated that once a dispute falls within the reach of the FAA, it applies to all issues of enforceability and validity.⁵⁹⁵

In *International Brotherhood of Electrical Workers, Local Union 1823 v. WGN of Colorado Inc.*,⁵⁹⁶ the court held that the UAA as adopted by Colorado is preempted in its entirety by the FAA in agreements which involve interstate commerce.⁵⁹⁷ The union brought an action to vacate the arbitration award on the basis that procedures used by the arbitration panel did not meet the requirements of the Colorado Arbitration Act. The court summarily dismissed this claim, citing *Collins Radio Co. v. Ex-Cell-O Corp.*⁵⁹⁸ as au-

587. *Id.* at 1274.

588. *Id.* at 1275.

589. *Id.*

590. 129 Misc. 2d 857, 493 N.Y.S.2d 705 (1985).

591. *Id.* at 858, 493 N.Y.S.2d at 707.

592. *Id.* at 859, 493 N.Y.S.2d at 708.

593. *Id.*

594. N.Y. CIV. PRAC. L. & R. § 7503(b).

595. *Dolomite*, 129 Misc. 2d at 859-60, 493 N.Y.S.2d at 709.

596. 615 F. Supp. 64 (D. Colo. 1985).

597. *Id.* at 65.

598. 467 F.2d 995, 999 (8th Cir. 1972).

thority that all of the provisions of the state act were superseded by the FAA when the agreement was one involving interstate commerce.⁵⁹⁹

In *Circle S Enterprises, Inc. v. Stanley Smith & Sons*,⁶⁰⁰ the court held that a state arbitration law which would have rendered an arbitration clause unenforceable was preempted by the FAA.⁶⁰¹ Circle S entered into a contract with a general contractor for the construction of a truck stop in South Carolina. The contract included a provision to arbitrate disputes. When a problem arose, Circle S refused to participate in the arbitration, stating that the provision in the contract was unenforceable under state law.⁶⁰² The South Carolina Arbitration Act included a provision requiring notice on the front page of the contract that the parties would be subject to arbitration.⁶⁰³ This notice was not included on the contract. The court refused to apply the South Carolina law, holding the FAA to be controlling as interstate commerce was involved.⁶⁰⁴ The court noted that although the contract did not specify any out-of-state suppliers or subcontractors, in fact, some part of the contract was performed outside Alabama.⁶⁰⁵ Moreover, the nature and extent of the work to be done was such that anyone concerned would have understood that materials or work from out-of-state would be necessary.⁶⁰⁶

The court in *Bunge Corp. v. Perryville Feed and Produce, Inc.*,⁶⁰⁷ found that a similar provision in the Missouri Arbitration Act could not be used to defeat arbitration when the FAA applied.⁶⁰⁸ Bunge obtained an arbitration award through default when Perryville Feed failed to deliver under the contract and refused to take part in the arbitration proceedings. When Bunge brought an action in circuit court to confirm the award, Perryville Feed objected on the grounds that the contract did not contain the required arbitration notice. The circuit court held that the contract did not meet the notice requirements of the Missouri statute.⁶⁰⁹ On appeal, the Missouri Supreme Court held that the contract was clearly within the purview of the FAA, as it called for delivery of agricultural products in Illinois, and thus, involved interstate

599. *International Brotherhood*, 615 F. Supp. at 65, 68.

600. 288 S.C. 428, 343 S.E.2d 45 (1986).

601. *Id.* at ____, 343 S.E.2d at 46-47.

602. S.C. CODE ANN. § 15-48-10(a) (Cum. Supp. 1986).

603. *Circle S*, 288 S.C. at ____, 343 S.E.2d at 46.

604. *Id.* at ____, 343 S.E.2d at 47.

605. *Id.* at ____, 343 S.E.2d at 46.

606. *Id.*

607. 685 S.W.2d 837 (Mo. 1985) (en banc).

608. *Id.* at 839.

609. *Id.* at 838. MO. REV. STAT. § 435.460 (1986) requires a contract with an arbitration clause to contain the following language:

"THIS CONTRACT CONTAINS A BINDING ARBITRATION PROVISION WHICH MAY BE ENFORCED BY THE PARTIES."

commerce.⁶¹⁰ Therefore, the court refused to apply the Missouri notice requirement.⁶¹¹

In *Ainsworth v. Allstate Insurance Co.*,⁶¹² the court held that the FAA may preempt contrary state law, even when the arbitration clause declares state law to be controlling.⁶¹³ Plaintiff, Director of the Missouri Division of Insurance acting as receiver of two insolvent insurance companies, sought to recover payment of reinsurance funds due under contracts between defendant and the insolvent insurers. The contracts provided for arbitration of disputes and stated that Missouri law was controlling. Missouri law authorized the Director to maintain a court action to settle the affairs of insolvent insurance companies.⁶¹⁴ The suit was removed to federal court, where defendant moved to stay the proceedings pending arbitration under the FAA.⁶¹⁵ The court granted defendant's motion, holding that the preemptive authority of the federal act could not be avoided by the choice of law provisions in the contract⁶¹⁶ or by the Missouri statute which specifically authorized court action.⁶¹⁷ The court also concluded that since the reinsurance agreements "touched on" interstate commerce, they were covered by the FAA.⁶¹⁸ The court rejected plaintiff's argument that application of the FAA in this case would be in conflict with the McCarran-Ferguson Act.⁶¹⁹ The court reasoned that arbitration statutes are laws of general applicability which pertain only to methods of dispute resolution and do not regulate business.⁶²⁰ Concluding that application of the FAA would not affect the substantive remedy available, the court found no bar to enforcing arbitration under the FAA.⁶²¹

In *Hope v. Dean Witter Reynolds, Inc.*,⁶²² the court held that although the FAA superceded state arbitration law, state contract law could be used in determining if an arbitration agreement had been revoked.⁶²³ In *Hope*,

610. *Bunge Corp.*, 685 S.W.2d at 838.

611. *Id.* at 839.

612. 634 F. Supp. 52 (W.D. Mo. 1985).

613. *Id.* at 57.

614. *Id.* at 53, 57 (citing Mo. REV. STAT. § 375.660 (1986)).

615. *Id.* at 53. 9 U.S.C. § 3 (1982) provides that, upon the application of the parties, the court shall stay the trial until the arbitrable issue is arbitrated.

616. *Ainsworth*, 634 F. Supp. at 54-55.

617. *Id.* at 57.

618. *Id.* at 56.

619. 15 U.S.C. § 1012(a) provides that the insurance business "shall be subject to the laws of the several states which relate to the regulation or taxation of such business." 15 U.S.C. § 1012(b) states, "no act of Congress shall be construed to invalidate, impair, or supercede any law enacted by any state for the purpose of regulating the business of insurance, unless such act specifically relates to the business of insurance."

620. *Ainsworth*, 634 F. Supp. at 57.

621. *Id.*

622. 181 Cal. App. 3d 446, 226 Cal. Rptr. 439 (1986).

623. *Id.* at ____, 226 Cal. Rptr. at 444.

stockbrokers sued their former employer, Dean Witter, under their employment contracts, claiming breach of contract and fraud. The employment contract contained an arbitration clause. The stockbrokers contended that the arbitration clause was contained in an unconscionable adhesion contract and that unconscionability was a ground for revocation under California law.⁶²⁴ Dean Witter moved to compel arbitration pursuant to the arbitration clause in the contracts. Upon denial of the motion, Dean Witter appealed, contending that because the employment contracts involved interstate commerce, questions of enforceability of the arbitration clause were governed by the FAA. The appellate court agreed that the federal statute was controlling, but held that state contract law could be used to determine whether grounds for revocation of the contract existed.⁶²⁵

624. *Id.* at ____, 226 Cal. Rptr. at 441.

625. *Id.* at ____, 226 Cal. Rptr. at 442.

